

Label: "OS-2018-01155"

Created by:douglas_domenech@ios.doi.gov

Total Messages in label:8 (3 conversations)

Created: 11-05-2018 at 09:27 AM

Conversation Contents

bone-cave harvestman lawsuit

Robert Henneke <rhenneke@texaspolicy.com>

From: Robert Henneke <rhenneke@texaspolicy.com>
Sent: Mon May 08 2017 16:17:36 GMT-0600 (MDT)
To: "casey_hammond@ios.doi.gov" <casey_hammond@ios.doi.gov>, "virginia_johnson@ios.doi.gov" <virginia_johnson@ios.doi.gov>
CC: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Subject: bone-cave harvestman lawsuit

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/angered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

Sincerely,

Rob Henneke

+++++

Robert Henneke

General Counsel &
Director, Center for the American Future
Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700 (o)
rhenneke@texaspolicy.com
www.americanfuture.com
facebook.com/centerfortheamericanfuture
@robhenneke

The contents of this email message and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and its attachments. Do not deliver, distribute, or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

"Johnson, Virginia" <virginia_johnson@ios.doi.gov>

From: "Johnson, Virginia" <virginia_johnson@ios.doi.gov>
Sent: Mon May 08 2017 17:02:40 GMT-0600 (MDT)
To: Robert Henneke <rhenneke@texaspolicy.com>

CC: "casey_hammond@ios.doi.gov" <casey_hammond@ios.doi.gov>, "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Subject: Re: bone-cave harvestman lawsuit

Thanks, Rob.

It was a genuine pleasure to meet you here in DC. Please keep us posted!

Virginia

On Mon, May 8, 2017 at 6:17 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/endangered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

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Rob Henneke

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Robert Henneke

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--

Virginia H. Johnson
Special Assistant to the Secretary
U.S. Department of the Interior
Telephone: (202) 208-4943

"Domenech, Douglas" <douglas_domenech@ios.doi.gov>

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Sent: Tue May 09 2017 06:05:40 GMT-0600 (MDT)
To: Robert Henneke <rhenneke@texaspolicy.com>
Subject: Re: bone-cave harvestman lawsuit

Keep fighting.

Doug Domenech
Senior Advisor
US Department of the Interior

On Mon, May 8, 2017 at 6:17 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/angered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

Sincerely,

Rob Henneke

+++++

Robert Henneke

General Counsel &
Director, Center for the American Future
Texas Public Policy Foundation
901 Congress Avenue
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[@robhenneke](#)

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Conversation Contents

Thursday

"Domenech, Douglas" <douglas_domenech@ios.doi.gov>

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Sent: Tue Apr 04 2017 06:35:36 GMT-0600 (MDT)
To: Rhenneke@texaspolicy.com
Subject: Thursday

Rob this is what is scheduled.

Location: Room 6120 in the Main Interior Building at 1849 C Street, NW. 6th floor. South end of the building next to the Secretary's Office. Check in with guard.

10:00 am to 10:30 am FWS Issues with:

Jim Cason - Acting Deputy Secretary

Virginia Johnson - Special Assistant, Assistant Secretary Fish Wildlife and Parks

Casey Hammond - Special Assistant, Fish and Wildlife Service

Dan Jorjani - Acting Principal Deputy Solicitor

Doug Domenech

10:30 am to 11:00 am BLM Issue with:

Jim Cason (above)

Kathy Bennedetto - Special Assistant, BLM

Kate MacGregor - Special Assistant, Assistant Secretary Land and Minerals

Dan Jorjani (above)

Doug Domenech

NOTE these are 30 minutes back-to-back meetings so suggest you get here early to process in (9:30 am). In my experience these folks will have tight schedules so it is unlikely the meetings can go long.

Looking forward to seeing you. Call my cell when you arrive at the building and I will try to come get you.

(b) (6)

Doug Domenech
Senior Advisor
US Department of the Interior

Mail Delivery System <Mailer-Daemon@smtp4.smgd.doi.gov>

From: Mail Delivery System <Mailer-Daemon@smtp4.smgd.doi.gov>
Sent: Tue Apr 04 2017 14:35:59 GMT-0600 (MDT)
To: <douglas_domenech@ios.doi.gov>
Subject: Delayed Mail (still being retried)

THIS IS A WARNING

ONLY. YOU DO NOT NEED TO RESEND YOUR MESSAGE. #

Your message could not be delivered for 0 days, 8 hours, 0 minutes. It will be retried until it is 2 days, 0 hours, 0 minutes old. For further assistance, please send mail to <postmaster@doi.gov>. If you do so, please include this problem report. You can delete your own text from the attached returned message. <Rhenneke@texaspolicy.com>: 421 4.4.0 [internal] no MXs for this domain could be reached at this time Final-Recipient: rfc822; Rhenneke@texaspolicy.com Status: 4.4.0 Action: delayed Last-Attempt-Date: Tue, 04 Apr 2017 13:54:21 -0600 Diagnostic-Code: smtp; 421 4.4.0 [internal] no MXs for this domain could be reached at this time

Robert Henneke <rhenneke@texaspolicy.com>

From: Robert Henneke <rhenneke@texaspolicy.com>
Sent: Tue Apr 04 2017 21:55:56 GMT-0600 (MDT)
To: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Subject: Re: Thursday

Thank you, Doug. This is outstanding – I very much appreciate you pulling these together.

Side note – your email says it was sent at 7:35am, but I didn't receive until after 8:30pm. No idea why the delay.

I'll be there no later than 9:30am.

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Date: Tuesday, April 4, 2017 at 7:35 AM
To: Robert Henneke <rhenneke@texaspolicy.com>
Subject: Thursday

Rob this is what is scheduled.

Location: Room 6120 in the Main Interior Building at 1849 C Street, NW. 6th floor. South end of the building next to the Secretary's Office. Check in with guard.

10:00 am to 10:30 am FWS Issues with:

Jim Cason - Acting Deputy Secretary

Virginia Johnson - Special Assistant, Assistant Secretary Fish Wildlife and Parks Casey Hammond - Special Assistant, Fish and Wildlife

Service Dan Jorjani - Acting Principal Deputy Solicitor Doug Domenech

10:30 am to 11:00 am BLM Issue with:

Jim Cason (above)

Kathy Bennedetto - Special Assistant, BLM Kate MacGregor - Special Assistant, Assistant Secretary Land and Minerals Dan Jorjani

(above) Doug Domenech

NOTE these are 30 minutes back-to-back meetings so suggest you get here early to process in (9:30 am). In my experience these folks will have tight schedules so it is unlikely the meetings can go long.

Looking forward to seeing you. Call my cell when you arrive at the building and I will try to come get you.

(b) (6)

Doug Domenech
Senior Advisor
US Department of the Interior

Douglas Domenech <douglas_domenech@ios.doi.gov>

From: Douglas Domenech <douglas_domenech@ios.doi.gov>
Sent: Wed Apr 05 2017 04:08:29 GMT-0600 (MDT)
To: Robert Henneke <rhenneke@texaspolicy.com>
Subject: Re: Thursday

Yes we had some email issues yesterday.

Sent from my iPhone

On Apr 4, 2017, at 11:54 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Thank you, Doug. This is outstanding – I very much appreciate you pulling these together.

Side note – your email says it was sent at 7:35am, but I didn't receive until after 8:30pm. No idea why the delay.

I'll be there no later than 9:30am.

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Date: Tuesday, April 4, 2017 at 7:35 AM
To: Robert Henneke <rhenneke@texaspolicy.com>
Subject: Thursday

Rob this is what is scheduled.

Location: Room 6120 in the Main Interior Building at 1849 C Street, NW. 6th floor. South end of the building next to the Secretary's Office. Check in with guard.

10:00 am to 10:30 am FWS Issues with:

Jim Cason - Acting Deputy Secretary

Virginia Johnson - Special Assistant, Assistant Secretary Fish Wildlife and Parks Casey

Hammond - Special Assistant, Fish and Wildlife

Service Dan Jorjani - Acting Principal Deputy Solicitor Doug Domenech

10:30 am to 11:00 am BLM Issue with:

Jim Cason (above)

Kathy Bennedetto - Special Assistant, BLM Kate MacGregor - Special Assistant, Assistant Secretary Land and Minerals Dan Jorjani

(above) Doug Domenech

NOTE these are 30 minutes back-to-back meetings so suggest you get here early to process in (9:30 am). In my experience these folks will have tight schedules so it is unlikely the meetings can go long.

Looking forward to seeing you. Call my cell when you arrive at the building and I will try to come get you. (b) (6) .

Doug Domenech
Senior Advisor
US Department of the Interior

Conversation Contents

Updated Invitation: Meeting with Rob Hennek, Texas Public Policy Foundation o... @ Thu Apr 6, 2017 10am - 10:30am (douglas_domenech@ios.doi.gov)

Attachments:

/3. Updated Invitation: Meeting with Rob Hennek, Texas Public Policy Foundation o... @ Thu Apr 6, 2017 10am - 10:30am (douglas_domenech@ios.doi.gov)/1.1 invite.ics

/3. Updated Invitation: Meeting with Rob Hennek, Texas Public Policy Foundation o... @ Thu Apr 6, 2017 10am - 10:30am (douglas_domenech@ios.doi.gov)/1.2 invite.ics

Gareth Rees <gareth_rees@ios.doi.gov>

From: Gareth Rees <gareth_rees@ios.doi.gov>
Sent: Tue Mar 28 2017 13:59:57 GMT-0600 (MDT)
To: douglas_domenech@ios.doi.gov, james_cason@ios.doi.gov, virginia_johnson@ios.doi.gov, casey_hammond@ios.doi.gov, daniel_jorjani@ios.doi.gov
CC: gisella_ojeda-dodds@ios.doi.gov, roslyn_sellars@fws.gov, thomas_irwin@fws.gov, "tasha_l_robbins@ios.doi.gov" <tasha_robbins@ios.doi.gov>
Subject: Updated Invitation: Meeting with Rob Hennek, Texas Public Policy Foundation o... @ Thu Apr 6, 2017 10am - 10:30am (douglas_domenech@ios.doi.gov)
Attachments: invite.ics invite.ics

This event has been changed.

Changed: Meeting with Rob Hennek, Texas Public Policy Foundation on [more details »](#)
Bone Harvestman Cave Spider

Attendees:
Jim Cason
Virginia Johnson
Casey Hammond
Dan Jorjani
Doug Domenech

When Thu Apr 6, 2017 10am – 10:30am Eastern Time

Where Room 6120 ([map](#))

Video call https://plus.google.com/hangouts/_/doi.gov/gareth-rees

Calendar douglas_domenech@ios.doi.gov

Who

- gareth_rees@ios.doi.gov - organizer
- james_cason@ios.doi.gov
- virginia_johnson@ios.doi.gov
- douglas_domenech@ios.doi.gov
- casey_hammond@ios.doi.gov
- daniel_jorjani@ios.doi.gov
- gisella_ojeda-dodds@ios.doi.gov - optional

- roslyn_sellars@fws.gov - optional
- thomas_irwin@fws.gov - optional
- tasha_l_robbins@ios.doi.gov - optional

Going? [Yes](#) - [Maybe](#) - [No](#) [more options »](#)

Invitation from [Google Calendar](#)

You are receiving this email at the account douglas_domenech@ios.doi.gov because you are subscribed for updated invitations on calendar douglas_domenech@ios.doi.gov.

To stop receiving these emails, please log in to <https://www.google.com/calendar/> and change your notification settings for this calendar.

Forwarding this invitation could allow any recipient to modify your RSVP response. [Learn More.](#)

From: Gregory Sheehan
To: [Samantha McDonald](#)
Cc: vincent_devito@ios.doi.gov
Subject: Re: THANK YOU!
Date: Friday, August 18, 2017 7:12:21 AM

Thank you Sam. It is imperative that we fully consider all information and science before making such a wide ranging determination.

Have a nice weekend.

Thanks
Greg

Greg Sheehan
Principal Deputy Director
US Fish and Wildlife Service
202-208-4545 office
202-676-7675 cell

On Aug 17, 2017, at 2:59 PM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Vince and Greg,

On behalf of my members, I wanted to thank you for the 6-month delay on the Texas Hornshell. They are most grateful for the extra time to allow their significant conservation efforts to come to fruition. It was a good call.

Best,

Sam

Samantha McDonald
Director of Government Relations
Independent Petroleum Association of America
(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)
<image001.jpg>

<THS ext NR final.pdf>

From: Devito, Vincent
To: [Samantha McDonald](#)
Subject: Re: THANK YOU!
Date: Thursday, August 17, 2017 4:38:49 PM

yes

On Thu, Aug 17, 2017 at 4:05 PM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Did you get the information you needed?

From: Devito, Vincent [mailto:vincent_devito@ios.doi.gov]
Sent: Thursday, August 17, 2017 3:30 PM
To: Samantha McDonald <SMcDonald@ipaa.org>
Subject: Re: THANK YOU!

No problem. Also, just of the phone with Scott at Performance.

On Thu, Aug 17, 2017 at 2:57 PM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Vince and Greg,

On behalf of my members, I wanted to thank you for the 6-month delay on the Texas Hornshell. They are most grateful for the extra time to allow their significant conservation efforts to come to fruition. It was a good call.

Best,

Sam

Samantha McDonald

Director of Government Relations

Independent Petroleum Association of America

(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)



--

Vincent DeVito, Esq.
Counselor to the Secretary of Interior for Energy Policy
Immediate Office of the Secretary
+1.202.208.2884
vincent_devito@ios.doi.gov

--

Vincent DeVito, Esq.
Counselor to the Secretary of Interior for Energy Policy
Immediate Office of the Secretary
+1.202.208.2884
vincent_devito@ios.doi.gov

From: Samantha McDonald
To: [Devito, Vincent](#)
Subject: RE: THANK YOU!
Date: Thursday, August 17, 2017 4:06:06 PM

Did you get the information you needed?

From: Devito, Vincent [mailto:vincent_devito@ios.doi.gov]
Sent: Thursday, August 17, 2017 3:30 PM
To: Samantha McDonald <SMcDonald@ipaa.org>
Subject: Re: THANK YOU!

No problem. Also, just of the phone with Scott at Performance.

On Thu, Aug 17, 2017 at 2:57 PM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Vince and Greg,

On behalf of my members, I wanted to thank you for the 6-month delay on the Texas Hornshell. They are most grateful for the extra time to allow their significant conservation efforts to come to fruition. It was a good call.

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Sam

Samantha McDonald
Director of Government Relations
Independent Petroleum Association of America
(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)



--

Vincent DeVito, Esq.
Counselor to the Secretary of Interior for Energy Policy
Immediate Office of the Secretary
+1.202.208.2884
vincent_devito@ios.doi.gov

From: Devito, Vincent
To: [Samantha McDonald](#)
Subject: Re: THANK YOU!
Date: Thursday, August 17, 2017 3:30:46 PM

No problem. Also, just of the phone with Scott at Performance.

On Thu, Aug 17, 2017 at 2:57 PM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Vince and Greg,

On behalf of my members, I wanted to thank you for the 6-month delay on the Texas Hornshell. They are most grateful for the extra time to allow their significant conservation efforts to come to fruition. It was a good call.

Best,

Sam

Samantha McDonald

Director of Government Relations

Independent Petroleum Association of America

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--

Vincent DeVito, Esq.
Counselor to the Secretary of Interior for Energy Policy
Immediate Office of the Secretary
+1.202.208.2884
vincent_devito@ios.doi.gov

From: Samantha McDonald
To: vincent_devito@ios.doi.gov; gregory_sheehan@fws.gov
Subject: THANK YOU!
Date: Thursday, August 17, 2017 2:58:20 PM
Attachments: [THS_ext_NR_final.pdf](#)

Vince and Greg,

On behalf of my members, I wanted to thank you for the 6-month delay on the Texas Hornshell. They are most grateful for the extra time to allow their significant conservation efforts to come to fruition. It was a good call.

Best,

Sam

Samantha McDonald
Director of Government Relations
Independent Petroleum Association of America
(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)



From: Rees, Gareth
To: [Todd Willens](#); [Amy Holley](#); [Andrea Travnicek](#); [Aurelia Skipwith](#); [Caminiti, Mariagrazia](#); [Daniel Jorjani](#); [David Bernhardt](#); [Douglas Domenech](#); [Downey Magallanes](#); [Edward Keable](#); [Heather Swift](#); [James Cason](#); [Juliette Lillie](#); [Katharine Macgregor](#); [Kerry Rae](#); [Kevin Haugrud](#); [Maureen Foster](#); [Micah Chambers](#); [Michael Black](#); [Nikolao Pula](#); [Richard Cardinale](#); [Scott Cameron](#); [Scott Hommel](#); [Timothy Williams](#); [Vincent Devito](#)
Subject: Weekly Report to the Secretary - August 3, 2017
Date: Thursday, August 3, 2017 2:54:35 PM
Attachments: [Weekly Report to the Secretary 080317.docx](#)

Good Afternoon All,

Please find attached the weekly report to the Secretary. I have attached both the word and Google Doc versions of the reports. If there are any issues, please let me know.

Thanks and sorry for the delay

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

 [Weekly Report to the Secretary 08/03/17](#)

From: Rees, Gareth
To: [Amy Holley](#); [Andrea Travnicek](#); [Aurelia Skipwith](#); [Caminiti, Mariagrazia](#); [Christine Bauserman](#); [Daniel Jorjani](#); [Douglas Domenech](#); [Downey Magallanes](#); [Edward Keable](#); [Heather Swift](#); [James Cason](#); [Juliette Lillie](#); [Katharine Macgregor](#); [Kerry Rae](#); [Kevin Haugrud](#); [Maureen Foster](#); [Micah Chambers](#); [Michael Black](#); [Nikolao Pula](#); [Richard Cardinale](#); [Scott Cameron](#); [Scott Hommel](#); [Timothy Williams](#); [Vincent Devito](#)
Subject: Weekly Report to the Secretary - July 20, 2017
Date: Thursday, July 27, 2017 4:29:44 PM
Attachments: [Weekly Report to the Secretary 072717.docx](#)

Good Afternoon All,

Please find attached the weekly report to the Secretary. I have attached both the word and Google Doc versions of the reports. If there are any issues, please let me know.

Thanks and sorry for the delay

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

 [Weekly Report to the Secretary 07/27/17](#)

From: Rees, Gareth
To: [Amy Holley](#); [Andrea Travnicek](#); [Caminiti, Mariagrazia](#); [Christine Bauserman](#); [Daniel Jorjani](#); [Douglas Domenech](#); [Downey Magallanes](#); [Edward Keable](#); [Heather Swift](#); [James Cason](#); [Juliette Lillie](#); [Katharine Macgregor](#); [Kerry Rae](#); [Kevin Hauqrud](#); [Maureen Foster](#); [Micah Chambers](#); [Michael Black](#); [Nikolao Pula](#); [Richard Cardinale](#); [Scott Cameron](#); [Scott Hommel](#); [Timothy Williams](#); [Vincent Devito](#); [Virginia Johnson](#)
Subject: Weekly Report to the Secretary - July 20, 2017
Date: Thursday, July 20, 2017 2:12:53 PM
Attachments: [Weekly Report to the Secretary 072017.docx](#)

Good Afternoon All,

Please find attached the weekly report to the Secretary. I have attached both the word and Google Doc versions of the reports. If there are any issues, please let me know.

Thanks

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

 **Weekly Report to the Secretary 07/20/17**

From: Devito, Vincent
To: [Samantha McDonald](#)
Subject: Re: Letter to FWS from IPAA
Date: Wednesday, July 19, 2017 5:51:23 AM

Thank you. Please let me know what you may be hearing as this unfolds.

On Wed, Jul 12, 2017 at 8:26 AM, Samantha McDonald <SMcDonald@ipaa.org> wrote:

Vincent,

Great meeting you a couple weeks ago. Given your interest in help with energy matters, I wanted to flag for you a wildlife letter we sent to the Acting Director at FWS yesterday we have about a potential listing of the Texas Hornshell mussel in New Mexico and Texas. It appears our energy is being blamed as a deterrent to the species, despite facts on water science and lack of sound science. We're really hoping that you can intervene before this species gets listed next month.

Thanks for all you do and I look forward to continuing to work with you!

Best,

Sam

Samantha McDonald

Director of Government Relations

Independent Petroleum Association of America

(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)



From: Rees, Gareth
To: [Amy Holley](#); [Caminiti, Mariagrazia](#); [Christine Bauserman](#); [Daniel Jorjani](#); [Douglas Domenech](#); [Downey Magallanes](#); [Edward Keable](#); [Heather Swift](#); [James Cason](#); [Juliette Lillie](#); [Katharine Macgregor](#); [Kerry Rae](#); [Kevin Haugrud](#); [Maureen Foster](#); [Micah Chambers](#); [Michael Black](#); [Nikolao Pula](#); [Richard Cardinale](#); [Scott Cameron](#); [Scott Hommel](#); [Timothy Williams](#); [Vincent Devito](#); [Virginia Johnson](#)
Subject: Weekly Report to the Secretary - July 13, 2017
Date: Friday, July 14, 2017 10:29:24 AM
Attachments: [Weekly Report to the Secretary 071317.docx](#)

Good Morning All,

Please find attached the weekly report to the Secretary. I have attached both the word and Google Doc versions of the reports. If there are any issues, please let me know.

Thanks

--

Gareth C. Rees

Office to the Deputy Secretary

U.S. Department of the Interior

Tel: 202-208-6291

Fax: 202-208-1873

Cell: 202-957-8299

 [Weekly Report to the Secretary 07/13/17](#)

From: Vincent Devito
To: gisella_ojeda-dodds@ios.doi.gov
Subject: Fwd: Letter to FWS from IPAA
Date: Wednesday, July 12, 2017 9:15:05 AM
Attachments: [ATT00001.htm](#)
[TX Hornshell.7.11.17.Sheehan.pdf](#)
[ATT00002.htm](#)

Pls print.

Begin forwarded message:

From: Samantha McDonald <SMcDonald@ipaa.org>
Date: July 12, 2017 at 8:26:18 AM EDT
To: "vincent_devito@ios.doi.gov" <vincent_devito@ios.doi.gov>
Subject: Letter to FWS from IPAA

Vincent,

Great meeting you a couple weeks ago. Given your interest in help with energy matters, I wanted to flag for you a wildlife letter we sent to the Acting Director at FWS yesterday we have about a potential listing of the Texas Hornshell mussel in New Mexico and Texas. It appears our energy is being blamed as a deterrent to the species, despite facts on water science and lack of sound science. We're really hoping that you can intervene before this species gets listed next month.

Thanks for all you do and I look forward to continuing to work with you!

Best,

Sam

Samantha McDonald
Director of Government Relations
Independent Petroleum Association of America
(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)

From: Samantha McDonald
To: vincent_devito@ios.doi.gov
Subject: Letter to FWS from IPAA
Date: Wednesday, July 12, 2017 8:26:34 AM
Attachments: [TX Hornshell.7.11.17.Sheehan.pdf](#)

Vincent,

Great meeting you a couple weeks ago. Given your interest in help with energy matters, I wanted to flag for you a wildlife letter we sent to the Acting Director at FWS yesterday we have about a potential listing of the Texas Hornshell mussel in New Mexico and Texas. It appears our energy is being blamed as a deterrent to the species, despite facts on water science and lack of sound science. We're really hoping that you can intervene before this species gets listed next month.

Thanks for all you do and I look forward to continuing to work with you!

Best,

Sam

Samantha McDonald

Director of Government Relations

Independent Petroleum Association of America

(202)857-4722 / [Visit IPAA](#) / [Visit ESA Watch](#)



To: Dixon, Shandria[shandria_dixon@ios.doi.gov]
From: Newell, Russell
Sent: 2017-11-14T08:07:53-05:00
Importance: Normal
Subject: Fwd: Daily Briefing Binder for Tuesday, November 14
Received: 2017-11-14T08:08:01-05:00
[DAILY UPDATE FOR CABINET AFFAIRS 11-13-17.docx](#)
[Daily Schedule.docx](#)
[Soda Ash Royalty BP for ASLM 10-25-2017 \(1\).docx](#)

Russell Newell
Deputy Director of Communications
U.S. Department of the Interior
(202) 208 6232
@Interior

----- Forwarded message -----

From: Thiele, Aaron <aaron_thiele@ios.doi.gov>
Date: Mon, Nov 13, 2017 at 6:28 PM
Subject: Daily Briefing Binder for Tuesday, November 14
To: Caroline Boulton <caroline_boulton@ios.doi.gov>, David Bernhardt
(b) (6) <[REDACTED]@ios.doi.gov>, Downey Magallanes <downey_magallanes@ios.doi.gov>, Elinor Renner <elinor_renner@ios.doi.gov>, Laura Rigas <laura_rigas@ios.doi.gov>, Leila Getto <leila_getto@ios.doi.gov>, Michael Argo <michael_argo@ios.doi.gov>, Russell Newell <russell_newell@ios.doi.gov>, Rusty Roddy <russell_roddy@ios.doi.gov>, Ryan Zinke <cdr06@ios.doi.gov>, Scott Hommel <scott_hommel@ios.doi.gov>, Todd Willens <todd_willens@ios.doi.gov>, Todd Wynn <todd_wynn@ios.doi.gov>, Wesley 'Luke' Bullock <wesley_bullock@ios.doi.gov>
Cc: Aaron Thiele <aaron_thiele@ios.doi.gov>

Attached is tomorrow's schedule and electronic copies of the materials in the Secretary's briefing binder.

Best,
Aaron

Tuesday, November 14, 2017

9:00 a.m. **Daily Scheduling and Communications**
Location: Secretary's Office
Staff: Bernhardt, Magallanes, Rigas, Argo

9:30 a.m. **HOLD: Senior Staff Update**
Location: Secretary's Office
Staff: Roddy

11:00 a.m. **Monthly Meeting with ASPMB / Scott Cameron**
Location: Secretary's Office
Staff: Cameron, Bernhardt, Magallanes, Hommel

12:00 p.m. **Lunch**

1:00 p.m. **Weekly Politicals' Meeting**
Location: 5160 Conference Room

1:30 p.m. **Secretary's Daily Meeting with the Chief of Staff**
Location: Secretary's Office
Staff: Hommel

4:00 p.m. **Meeting with Majority Leader Kevin McCarthy**
Location: H-107, US Capitol Building
Staff: Kaster

5:30 p.m. **Personal // Eugene Graf**
Location: Secretary's Office

**INFORMATION/BRIEFING MEMORANDUM
FOR THE ASSISTANT SECRETARY – LAND AND MINERALS MANAGEMENT**

DATE: October 25, 2017

FROM: Michael D. Nedd, Acting Director – Bureau of Land Management (BLM)

SUBJECT: Soda Ash (Sodium) Royalty Rates

The purpose of this memo is to provide information about the current soda ash royalty rates and recent relevant legislation to reduce the rates.

KEY FACTS

Jobs: Soda ash mining companies believe that lower royalties are necessary to maintain current employment levels and to spur additional job creation. The 2011 interagency report to Congress¹ could not substantiate that lower royalty rates resulted in the creation of new jobs in the industry.

Stakeholder Positions: Soda ash mining companies believe a congressionally mandated royalty rate reduction is necessary for domestic producers of natural soda ash to compete with overseas producers. Senators Barrasso (WY) and Wyden (OR) introduced legislation in 2017 that would reduce the royalty to two percent from the current rate of six percent.

Public Lands Affected: Royalty rate reductions would impact all BLM-managed public lands open to the Mineral Leasing Act (MLA), but primarily those in states where soda ash is currently found including Arizona, California, Colorado, Nevada, and particularly Wyoming.

BACKGROUND

Soda ash is the largest inorganic mineral export of the United States and is used primarily in the glass and chemical industries. At the close of Fiscal Year (FY) 2016, the BLM administered 79 sodium leases (which includes trona², soda ash, and sodium carbonate) covering 100,009 acres in five states: Arizona, California, Colorado, Nevada, and Wyoming. The majority of the sodium leases are in Wyoming: 56 leases encompassing 62,347 acres. The Green River Basin in southwestern Wyoming hosts the largest trona deposit in the world and contains an estimated 47 billion tons of trona mineral resources.³ Annual U.S. soda ash production has increased from 10.6 million tons in 2010 to 11.7 million tons in 2017, approximately 90 percent of which was mined in Wyoming.

DISCUSSION

The current royalty rate on Federal sodium leases is six percent. In Fiscal Year 2016 sodium leases generated approximately \$44 million in Federal revenue.⁴

¹ “U.S. Department of the Interior, Report to Congress, The Soda Ash Royalty Reduction Act of 2006”

² Trona is a non marine evaporite mineral mined as the primary source of sodium carbonate in the United States.

³ One ton of Wyoming trona generally yields approximately 0.56 tons of soda ash when refined.

⁴ Source: U.S. Department of Interior, ONRR, October 2017

Only Congress has the authority to grant industry-wide royalty rate reductions. Since 2006, Congress has passed various legislation, beginning with the Soda Ash Royalty Reduction Act of 2006, that lowered the royalty rate to between two and four percent. This rate reduction expired in October of 2015. The primary congressional motivation in enacting the 2006 rate reduction was the loss of jobs in the soda ash industry and to regain market share on the world market. However, in its report to Congress in 2011, the interagency⁵ team concluded that the 2006 Act resulted in a substantial loss of royalty revenues to the Federal government and the states. The report estimated that for fiscal years 2007 to 2010, royalty payments were estimated to be \$124.2 million less than they would have been without the rate reduction. In addition, the 2006 Act did not appear to have contributed in any significant way to the creation or maintenance of jobs within the industry, to the industry's export competitiveness, or to any significant increase in capital expenditures to enhance production.

Prior to the industry-wide reduction in 2006, royalty rate reductions for soda ash mining were authorized by the BLM on a lease-by lease basis under the authority of the MLA, Section 209 and 43 CFR 3513 (Solid Leasable Regulations) and Washington Office policy (WO IM 90-380). Even though the industry-wide rate reduction expired in 2015, leaseholders may still apply for lease-specific royalty rate reductions at any time through the BLM state offices. Attachment 1 provides additional detail on BLM's authority over royalty rate reductions and the legislative history of Congress's involvement.

The domestic soda ash industry appears to be benefiting from changes in the industry since the interagency report of 2011, including relatively low production costs and lower environmental impacts which provide a competitive advantage over producers of synthetic soda ash. Since the expiration of the industry-wide royalty rate reduction in 2015, Senator Barrasso (WY) introduced legislation in September of 2015 (S. 2031) that would lower the royalty rate on soda ash to two percent and Senator Wyden (OR) introduced similar legislation in March of 2017 (S. 546). The stated purpose of this proposed legislation is to "boost the competitiveness of the American soda ash industry, supporting hundreds of good-paying jobs."⁶

NEXT STEPS

The purpose of this memo is to provide information and next steps have not been identified.

ATTACHMENTS

1. BLM's Authority for Royalty Rate Reductions for Soda Ash

⁵ The report was prepared with input and assistance from the U.S. Department of the Interior's, Bureau of Land Management, Office of Policy Analysis, Office of Natural Resources Revenue, and U.S. Geological Survey.

⁶ Press Release, John Barrasso, <https://www.barrasso.senate.gov/public/index.cfm/2017/3/barrasso-wyden-introduce-bill-to-help-american-soda-ash-producers-compete-in-global-market>

ATTACHMENT 1

BLM's Authority for Royalty Rate Reductions (RRR) for Soda Ash

Authority

- Congress (through legislation) has the ability to enact an industry-wide RRRs, while the BLM does not. There is a precedent already established for Congress to do so. The current royalty rate on Federal sodium leases produced from Federal land is six percent.
- The BLM has the authority to issue RRRs for Solid Leasable Minerals as outlined in the Mineral Leasing Act (MLA), Section 209 and 43 CFR 3513 (Solid Leasable Regulations) and WO policy (WO IM 90-380).
- The MLA states that it is permissible to consider RRRs upon receipt of an application from the leaseholder on a case-by-case basis for a leasehold or a tract or portion thereof.
- When an application is received, it is evaluated against the four criteria outlined in WO IM 90-380 dated February 28, 1990. The criteria are as follows: 1) Expanded Recovery, 2) Extension of Mine Life, 3) Financial Test - Unsuccessful Operations, and 4) Financial Test - Expanded Recovery/Extension of Mine Life.
- The BLM is responsible for helping to encourage conservation and the greatest ultimate recovery of the resource on each lease, as well as promoting development through reasonable lease terms.

Several Past BLM Administered RRRs for Sodium:

- **1994** - FMC Corporation applied to the BLM for a RRR on a specific tract and was granted a reduction to 3.5% for 5 years
- **1994** - OCI (RP) applied to the BLM for a RRR on a specific tract and was granted a reduction to 3.5% for 2 years.
- **1998** OCI applied to the BLM for a RRR on a specific tract and was granted a reduction to 2% for 10 years.
- **2002** FMC applied to the BLM for a RRR on a specific tract and was granted a reduction to 3% for 10 years.

Past Legislation and Proposed Legislation for RRRs for Sodium

- **2006** the Soda Ash Royalty Reduction Act of 2006 reduced the soda ash royalty to 2% for 5 years.
- **September 2013** - Congress passed legislation (a rider to a Helium bill) that reduced royalty rates to 4% for 2 years.
- **April 2015** HR1992, the American Soda Ash Competitive Act sponsored by Representative Cook was introduced and would continue the 2% RRR for another 5 years.
- **September 2015** S. 2031 was introduced by Senator Barrasso and could continue the RRR of 2% for 5 years.

- **March 2017** S.546, the Soda Ash Competitiveness Act was introduced by Senator Barrasso and Wyden to set royalty rates to 2% for 5 years.

Sources

Mineral Leasing Act (Section 209)

§209. Suspension, waiver, or reduction of rents or royalties to promote development or operation; extension of lease on suspension of operations and production

The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, oil shale ¹gilsonite (including all vein-type solid hydrocarbons), ² phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the leases cannot be successfully operated under the terms provided therein. ³ *Provided, however,* That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar sand areas. For purposes of this section, the term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoises, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under any lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties.

Solid Leasable Mineral Regulations (43 CFR 3513)

Subpart 3513 speaks to Waiver, Suspension or Reduction of Rental and Minimum Royalties.

3513.11 says the BLM has a process which may allow you temporary relief from these lease requirements.

3513.12 says the BLM will consider approval for a RRR if a) it is in the interest of conservation; b) it will encourage the greatest ultimate recovery of the resource; and c) it is necessary either to promote development of the mineral resources or because you cannot successfully operate the lease under existing terms.

3513.15 speaks to the process for applying for a RRR

3513.16 is the final subpart and it speaks to the requirement of a fee to be paid when the application for a RRR etc. is filed.

WO Instruction Memorandum (IM) 90-380

This IM dated February 28, 1990, states that there are 4 categories under which the BLM can process applications for a temporary RRR for non-coal mineral estates. A fifth category for coal was later added in a separate action. These categories include:

1) Expanded Recovery:

a) adverse geologic and engineering conditions make the solid leasable mineral resources identified in the application economically unrecoverable at the lease royalty rate using current standard industry operating practices or

b) where the lease royalty rate, all geologic and engineering conditions being the same or similar, make the solid leasable mineral resources identified in the application likely to be bypassed because they are less economically recoverable than resources on non-Federal leases that are part of the near-term mining sequence within the same operation.

2) Extension of Mine Life:

Near the end of the mine life, where a reduced royalty rate would extend the period during which mining would occur and thereby enhance the greatest ultimate recovery of solid leasable mineral resources. The lessee must certify that adverse geologic and engineering conditions make these incremental resources economically unrecoverable, using current standard industry operating practices, without a RRR.

3) Financial Test - Unsuccessful Operations:

Where operations on a lease are not financially profitable under the terms of the lease, with lease operating costs exceeding lease production revenue. The BLM with the Minerals Management Service (MMS) assistance, would evaluate the financial justification of such applications based on the submission of detailed operating data as well as the geologic engineering data required in categories 1 and 2.

4) Financial Test - Expanded Recovery/Extension of Mine Life:

Where lessees qualifying under categories 1 or 2 above request a RRR to a level below the specified rates set forth in these guidelines for those categories. A degree of profitability would be allowed as an incentive to produce these resources. The BLM, with MMS assistance, would confirm the financial basis of such applications based on the submission of detailed operating data as well as the geologic and engineering data required in categories 1 and 2.

5) (Coal ONLY) Geographic Area Royalty Rate Differentials:

Where the BLM has recognized that the royalty rate on Federal coal reserves is not competitive with the royalty rate on non-Federal coal reserves and this royalty rate differential causes Federal coal to be bypassed or to remain undeveloped in the qualifying geographic area.

DEPARTMENT OF THE INTERIOR DAILY UPDATE FOR CABINET AFFAIRS – 11/13/17

Lori Mashburn, White House Liaison
Natalie Davis, Special Assistant to the Secretary

STATUS OF THE SECRETARY

THIS WEEK: The Secretary is in DC.

- 11/13 – Call with New Mexico Governor Susana Martinez
 - Lunch with Joshua Tree Superintendent
- 11/14 – Meeting with Majority Leader Kevin McCarthy, Sen. Barrasso, Rep. Cheney, and Rep. Cook
 - Meeting with Senator Durbin
- 11/15 – Meeting with The Nature Conservancy
 - Meeting with National Park Service Regional Directors Meeting
 - TENT. Gershwin Prize Event
- 11/16 – OTR Breakfast Roundtable with Senators
 - TENT. Museum Dedication Gala
- 11/17 – Internal Meetings

STATUS OF THE DEPUTY SECRETARY

TODAY: Internal Meeting in DC.

WH COMMS REPORT (submitted Friday, 11/10)

Press Inquiries:

- Small inquiries and logistical inquiries.
- **RV News:** (David Rosansky)—**REQUEST**-- I see a fine has been issued to Hamilton County Indiana in the amount of \$6,533 for two violations of NAGPRA. Can you tell me about that? I had thought the fine might be much higher based on the long term the parks department was not in compliance. Also, I believe the tribes submitted \$20,000 in expenses--**RESPONSE**— The Department of the Interior generally does not comment on pending civil penalty enforcement actions to avoid jeopardizing on-going investigations.
- **CQ Roll Call:** (Jackie Toth)—**REQUEST**-- Can we get comment on Sen. Durbin's hold on the four Interior nominees on the Senate calendar?—**RESPONSE**-- It's a false argument. Nominees like Brenda Burman have been waiting months for a vote. An October 23rd scheduling request doesn't explain the other 116 days.

Top Stories

- **KTUU Alaska:** [Veterans Day activities begins with reading of Vietnam Memorial Wall names](#)
- **E&E News:** [Durbin puts hold on nominees](#)
- **Philadelphia Inquirer- OPINION:** [Recognizing the Pa. veterans who just donated \\$40K to Vietnam War Memorial | Secretary Ryan Zinke](#)
- **Durango Herald- OPINION:** [Woolston: America's security and economy depend on ANWR](#)
- **New York Times:** [Lines Are Drawn Over Design for a National World War I Memorial](#)

Top Issues and Accomplishments

- Interior continues to support all Hurricane Harvey, Hurricane Irma, Hurricane Maria, and Hurricane Nate efforts. All bureaus are executing their emergency plans and assisting in Hurricane relief.
- Tonight, Secretary Zinke has a Fox News Interview with Shannon Bream. The hit is at 11 pm.

- Today, DOI made a personnel announcement regarding the four veterans Secretary Zinke has recently hired.
- Friday, Secretary Zinke will visit Manassas Battlefield to honor veterans and tour the battlefield.
- Saturday, Secretary Zinke will participate in five Veterans Day events and celebrations.
 - **6:30 am EST:**
Secretary Zinke will join veterans in washing the wall at the Vietnam Veterans Memorial.
 - **8:45 am EST:**
Secretary Zinke participates in a Veterans Day observance at the World War II Memorial.
 - **10:30 am EST:**
Secretary Zinke will participate in the 64th annual Veterans Day National Ceremony at Arlington National Cemetery.
 - **1:00 pm EST:**
Secretary Zinke will address the Vietnam Veterans Memorial Fund at the Vietnam Veterans Memorial.
 - **3:30 pm EST:**
Secretary Zinke will give remarks at the Korean War Veterans Memorial Veterans Day Observance.

AGENCY MEDIA

WEEK AHEAD November 8 thru November 16, 2017 (submitted November 8)

Announcements/Releases/Events

U.S. Department of the Interior

Secretarial-level Announcements/Events/Interviews

This week the Secretary is in Washington, D.C.

- **November 14:** the “Stream Protection Rule” (related to OSMRE) will hit the Federal Register. Communications materials are forthcoming.
- **November TBD:** Major announcement regarding Arlington Memorial Bridge. Pending WH review. December 4: Proclamation signing in Utah regarding the Antiquities Act. Communications materials are forthcoming.
- **November/December TBD:** USGS will release a report on critical minerals, followed by an EO and SO signing. Communications materials are forthcoming.

The Secretary stands ready to support the WH on media opportunities to push the President’s Tax Reform Agenda. WH has dates/times of availability.

National Park Service

- **November TBD:** Local NPS Release: NPS will announce plans to re-establish operations at Virgin Islands National Park.
- **November 14:** Local NPS Release: Glacier National Park will notify the public of the availability of Glacier National Park’s Lake McDonald Properties Management Plan Environmental Assessment (EA). The EA will be available for a 30-day public review and comment period. Following the public review and comment period, the park will prepare a formal decision document. The EA analyzes alternatives to manage NPS-owned properties surrounding Lake McDonald, which includes buildings listed on the National Register of Historic Places.
- **November 14:** National Joint Release: The U.S. Mint and the NPS will unveil the Indiana quarter at George Rogers Clark NHP. This is the last America the Beautiful Quarter® release scheduled for 2017, and the 40th of the 56-quarter series from the U.S. Mint recognizing national parks or historic sites around the country. Deputy Regional Director Patricia Trap will speak at the event.

- **November 15:** Local NPS Release: Death Valley National Park anticipates the simultaneous release of two Environmental Assessments for a 30-day public review. Public meetings will be held during the public review periods. Both projects address damage that resulted from a major rainstorm and extensive flash flood in 2015.
- **November TBD:** Local NPS Release: NPS NCR will issue news release on upcoming deer management and reduction at three western Maryland parks. All three parks did the same last year with minimal controversy.

U.S. Fish and Wildlife Service

- **November 13 (tent.):** National FWS Release: FWS will issue a release on the opening of the public comment for both the Candidate Conservation Agreements with Assurances (CCAA) policy and the corresponding regulations. These notices will solicit public comments on the 2016 revised policy and regulations to determine if there are additional revisions, particularly to the CCAA standard, that will make the policy and regulations easier to implement for those entities choosing to participate in a CCAA.
- **November 13:** Local FWS Release: FWS will announce the reopening of comment period on the proposed rule regarding the threatened species status for San Fernando Valley Spineflower.
- **November TBD:** FWS News Bulletin: FWS will issue a news bulletin regarding a NEPA Environmental Assessment related to lethal take permits for cormorants (a type of bird which is considered an invasive species) for aquaculture facilities.

Bureau of Land Management

- **November 14-15:** BLM will hold the final scoping meetings for the Notice of Intent to amend Greater sage-grouse land use plans in Vernal and Cedar City, UT, respectively.
- **November 16:** Acting ASLM Kate MacGregor will deliver the keynote address at the Grand Junction Petroleum and Mining Club's monthly meeting in Grand Junction, Colo. Titled DOIs Role in Energy Dominance, her remarks will focus on the Administration's energy-related priorities, including efforts to streamline the environmental review and permitting processes, reduce regulatory burdens on energy development, and boost rural economies through job creation in the energy industry.
- **November 16:** BLM-AK Authorized Officer Erika Reed and Deputy Authorized Officer Dave Mushovic will attend a monthly Senior Leadership meeting for the Trans-Alaska Pipeline System, hosted by Alyeska Pipeline Service Company (the corporation that manages the system).
- **November TBD:** National BLM Release: BLM will issue a release announcing that Sabinoso Wilderness is now open to the public.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision about whether to grant a royalty rate reduction for the West Elk Mine. The BLM proposes to approve Mountain Coal Company, LLC's application for a royalty rate reduction from 8 percent to 5 percent for 10.3 million tons of coal in the West Elk Mine in southwest Colorado's North Fork Valley.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision whether to modify GCC Energy's King II Mine in Montezuma County in southwest CO by 951 acres to allow GCC to access an estimated 4.66 million tons of recoverable Federal coal reserves for an additional 6.5 years of mining.

U.S. Geological Survey

- **November 13 (tent.):** The USGS will release the first-ever map of croplands worldwide using 30-m resolution, which is the highest resolution yet. This is a collaborative effort among international agencies. The map will clearly show individual farm fields and cover 1.874 billion hectares of croplands. This is a one-of-a-kind dataset primarily using Landsat satellite data. The map is part of

the Global Food Security-Support Analysis Data @ 30-m (GFSAD30) Project. Partners and stakeholders include US federal agencies (NASA, USDA, EPA), Google, universities, and international research groups.

November 13: National USGS Release: USGS will announce the estimated amount of uranium ore in portions of Texas, New Mexico, and Oklahoma. The discovery of calcrete deposits by industry led USGS to conduct an assessment. In the process of the assessment, a new species of uranium mineral was discovered by USGS.

- **November 15:** National USGS Release: USGS will issue a release announcing the Pecora Awards for Excellence in Earth Observation.
- **November TBD:** Local USGS Release: USGS will issue a release regarding a new USGS study that tracks millions of tons of rocks, gravel and silt carried by the Sauk River and its tributaries to the Skagit River.

Bureau of Reclamation

- **November TBD:** National Reclamation Release: Reclamation will release two funding opportunity announcements under the Drought Response Program for drought resiliency projects and drought contingency planning. The Drought Response Program supports a proactive approach to drought. It will provide assistance to water users for drought contingency planning and to take actions that will build long-term resiliency to drought.

Bureau of Ocean Energy Management:

- **November TBD:** BOEM Note to Stakeholders: BOEM issue a note to stakeholders regarding Q3 FY17 study reports posting to ESPIS.
- **November TBD:** GOMR Sale 249 closeout NTS.
- **November TBD:** BOEM will announce a three-week extension of the Liberty EIS comment period.

Office of the Assistant Secretary-Indian Affairs (including Bureau of Indian Affairs)

- **November 14:** Acting Assistant Secretary-Indian Affairs Tahsuda and Acting Special Trustee Gidner will appear on the Native America Calling radio show to talk about the final deadline the US District Court set for November 27, 2017 for any Class Member or the heir of a Class Member to provide documentation so that payment can be made.
- **November 15:** "Rock Your Mocs (Moccasins) Day!" Acting Assistant Secretary-Indian Affairs Tahsuda will participate in the annual Native Youth inspired day by gathering with employee to "Rock Your Mocs!" This will be social media driven with our leadership, staff, and BIE Schools.

CONGRESSIONAL UPDATE

UPCOMING HNRC HEARING: The House Natural Resources Subcommittee on Indian Affairs is holding a legislating hearing on the following bills: H.R. 212 (Young of AK), expediting Congressional review of tribal funding agreement under ISDEAA; H.R. 2320 (Larsen), land into trust for Samish Indian Nation; and H.R. 3225 (DeFazio), allow certain OR tribes to lease or transfer land. Witness is pending.

Timing: Wednesday, November 15

Contact: Amanda Kaster, Policy Adviser, Congressional Affairs

PENDING COLORADO ANNOUNCEMENT: Sec. Zinke and Dep. Sec. Bernhardt have been working with Sen. Gardner and Rep. Tipton on a resolution to a long-standing issue in Western Colorado regarding the release of funds related to an old mine. This money would go to the state and counties. The previous administration did nothing on this issue for the last eight years. DOI is working with the delegation on releasing these funds. It will be big news for the Senator, Congressman and rural Colorado.

Timing: TBD

Contact: Micah Chambers, Deputy Director, Congressional Affairs

POLITICAL APPOINTEE UPDATE

DOI politicals on board 65

3 PAS confirmed as of 9/18.

6 nominated awaiting confirmation:

- Pending Senate floor vote: Susan Combs, Assistant Secretary Policy Management and Budget.
- Pending Senate floor vote: Brenda Berman, Commissioner, Bureau of Reclamation.
- Pending Senate floor vote: Joe Balash, Assistant Secretary, Land and Minerals
- Pending Senate floor vote: Ryan Douglas Nelson, Solicitor
- Pending Hearing: Tara Sweeney, Assistant Secretary for Indian Affairs
- Pending Hearing: Steve Gardner, Director, Office of Surface Mining and Reclamation
- **TO BE ANNOUNCED TODAY:** Tim Petty, Assistant Secretary for Water and Science

Overall:

- Schedule C: 36 of 68 onboard; 2 starting; 6 in process
- NC-SES: 26 of 44 onboard; 3 starting; 1 in process
- PAS: 3 Confirmed; 5 Announced; 14 of 17 Submitted to PPO

SECRETARY SPEAKING INVITATIONS

Accepted:

11/21 – US Marine Corps Unveiling of the Iraq and Afghanistan engraving at Iwo Jima

Open (date TBC)- Americans for Tax Reform (DC)

Open (date TBC)- Detroit Economic Club

Event Postponed by organizers due to fire - 10/21 – DEPA BOD Meeting (CA)

Outstanding Invitations in Process:

1/11/18 – EEI CEO and Board Conference (Phoenix, AZ)

Declining

11/13 Montana Farm Bureau Federation Annual Meeting (Billings, MT)

11/14 – George Rogers Clark National Historical Park Quarter Launch (Vincennes, Indiana)

11/15 Motorcycle Industry Council Symposium (Carson, CA)

11/29 Association of California Water Agencies 2017 Fall Conference and Exhibition (Anaheim, CA)

12/1-2 – Western Governors Association Annual Meeting (Phoenix, AZ)

12/5-7 America Outdoors Association's 29th Annual Marketing and Management Conference for Outfitters and Adventure Resorts (Reno, NV)

12/6 American Exploration and Mining Association Annual Meeting (Reno, NV)

12/8 - Valley Industry and Commerce Association Annual Meeting (Los Angeles, CA)

12/11 – Veterans Day Commemoration (Prussia, PA)

12/14 – Leadership Missoula (Missoula, Montana)

12/8 – DOI Toastmasters event (Washington, DC)

12/9 – Western Caucus Foundation Winter Policy Meeting (Las Vegas, NV)

2/9-10 Associated General Contractors Western Chapter Annual Meeting (La Jolla, CA)

2/23/18 – West Slope Colorado Oil and Gas Association Annual Meeting (Grand Junction, CO)

EMERGENCY MANAGEMENT

Interagency Hurricane response and recovery efforts:

USGS continues to provide support to FEMA by identifying, flagging, and surveying high water marks for communities impacted by riverine or coastal flooding in Puerto Rico. While this mission is expected to continue through December 15, field work will be completed this week and the team will begin to process and analyze the data they have gathered. A team of five scientists from the USGS Landslides Hazards Program (LHP) continues to conduct surveys documenting landslide occurrences. To date, over 50,000 landslides have been documented across Puerto Rico. Landslides have impacted infrastructure and property, and isolated several mountain communities.

DOI has 10 (-17) employees from bureaus and offices supporting the FEMA Surge Capacity Force. The group is comprised of volunteers that are located in Puerto Rico, the U.S. Virgin Islands, Nevada, and Florida. These personnel are expected to demobilize by November 28 and FEMA has concluded that additional DOI personnel are not needed in support of this mission. DOI also has 31 (+7) employees supporting, or are scheduled to provide support to, the Small Business Administration (SBA). The group is comprised of volunteers working in New York, Texas, California, Virginia, Florida, and Washington, D.C.

Internal bureau and office-specific Hurricane response and recovery activities:

NPS reports that recent weather conditions and slowly subsiding water levels have improved conditions in the Big Cypress National Preserve, where staff has been working to restore facilities, infrastructure, and access to the public after Hurricane Irma.

USFWS has initiated a phased re-opening of the Florida Keys NWR Complex after closures were required due to impacts from Hurricane Irma. Visitor access was restored to the Crocodile Lake NWR, the National Key Deer NWR, the Key West NWR, and the Great White Heron NWR earlier this month.

Department of Homeland Security Reporting:

In Puerto Rico, power has been restored to approximately 43 (+7)-percent of customers and the expectation is that 95-percent of Puerto Rico will be restored by December 15. Potable water has been restored to more than 85 (+3)-percent of clients served by the Puerto Rico Aqueduct and Sewer Authority. The Guajataca Dam drawdown is now complete as water levels have dropped to 14 feet below the spillway. While a Flash Flood Warning remains in effect, the Puerto Rico Emergency Management Agency is working with the U.S. Army Corps of Engineers and the National Weather Service to discontinue the warning as early as today.

In the U.S. Virgin Islands, the Virgin Islands Water and Power Authority estimates 90-percent power restoration by late December. Over the last week, grid power service has increased to 38 (+17)-percent of the population for St. Thomas, 12 (+7)-percent for St. Croix, and 30 (+26)-percent for St. John. Telecommunication officials report 62 (+10)-percent of cellular sites are operational and an estimated 93 (+5)-percent of the population lives in areas where wireless voice and text service has been restored.

OUTSIDE MEDIA OF INTEREST (new)**Vice President Pence Honors Veterans By Cleaning Vietnam Memorial.**

USA Today (11/11, Groppe) reported Vice President Mike Pence and Interior Secretary Ryan Zinke helped clean names etched onto the Vietnam Veterans Memorial Saturday. After arriving at the memorial with his wife, Pence, wearing blue jeans and yellow gloves, "carried an orange cleaning bucket with the message "Let's Do This" to an area close to the center of the wall." USA Today quotes Zinke

saying to the vice president, “You scrub and I’ll dry.” [ABC News](#) (11/11) reported Pence “shook hands and posed for photos with the volunteers in subfreezing temperatures just after dawn.” Pence and Zinke were also joined by James Pierce, “a National Park Service ranger who lost a leg while serving with the North Carolina Army National Guard in Afghanistan.” The event was sponsored by the New Day USA, a mortgage company specializing in loans to veterans.

Zinke Says Democrats Holding Interior Nominees ‘Hostage.’

The [AP](#) (11/11, Daly) reports Interior Secretary Zinke on Thursday sent a “sharply worded letter” to Senate Minority Whip Dick Durbin accusing Senate Democrats of “holding the department’s nominees ‘hostage’ to a political agenda that includes opposition to his review of presidentially designated monuments.” Zinke asserted the nominees “have nothing to do with this monument review, yet they have been forced to sit on the sidelines [for months]. As a former Navy SEAL, this is not the type of hostage situation I am accustomed to.” According to the AP, “Durbin has placed holds on four Interior nominees: Susan Combs, nominated as assistant secretary for policy, management and budget; Joseph Balash, assistant secretary for land and minerals management; Ryan Nelson, solicitor; and Brenda Burman, commissioner of the Bureau of Reclamation, which oversees dams and water projects in 17 Western states.”

Fox News Interviews Zinke About Energy Production On Federal Lands, National Park Fee Hikes.

Interior Secretary Ryan Zinke was interviewed Thursday evening on [Fox News @ Night](#) (11/9) about criticism he has received from environmentalists. In response to concerns about increasing energy production on Federal lands, Zinke said, “If you want to make our country not dependent on foreign oil. I am a former seal. I don’t want to see your kids, my kids go to foreign shores and fight for a commodity we have here. We are going to do it right. We are not going to sell or transfer public land, but if you believe in the concept that the best science, best practices, greater good in the longest term, then you’re with the secretary of the interior. But if you believe public land is exclusive, only for the elite few that want to look at it but i’m a public access person. I think the public land should be available to america and the public.” Zinke also called criticism of National Park fee increases “baloney,” adding, “The greatest bargain in America is \$80 for a year-long pass of our public lands. I face an \$11.5 billion backlog of our public lands and parks. Our parks are being loved to death. everyone loves our parks. As a former military, there’s two things we need fun absolutely: the military and our parks. Come on, America. if you think \$80, all year, every park, all the time, by a car load, is too much to ask, I mean, come on. It’s our parks. Those that don’t believe that we should invest in our parks. Our parks aren’t Republican or Democrat or Independent issue. It’s an American issue. America, step up. Go to our parks and enjoy them. They are treasures we need to invest in.” Later in the segment, Zinke discussed his involvement with Whitefish and said he will spend time over the weekend visiting national monuments in honor of Veterans Day.

How The Opioid Crisis Is Affecting Native Americans.

[NPR](#) (11/11) interviewed Dr. Ron Shaw, president of the Association of American Indian Physicians, about how the opioid crisis is affecting Native Americans. According to a report from the Centers for Disease Control, “the death rate of Native Americans from opioid overdoses was the highest of any racial demographic. Some 8.4 per 100,000 Native Americans died of opioid overdoses in 2014.” Shaw explained that “many Native American populations suffer from what is known as historical and intergenerational trauma,” which has “been shown to be associated with increased rates of depression, drug use and drug addiction.” Shaw advocates for getting native leaders to “testify before Congress,

including the Senate Committee on Indian Affairs, and try to put the native-specific issues before our legislators.”

Settlement Reached In Lawsuit Against Bureau of Land Management.

The AP (11/9, Warren) reported a federal judge on Wednesday “approved the terms that settle a long-running dispute involving the Bureau of Land Management and property owners along the Red River.” The BLM argued the river “has shifted as much as 2 miles (3.2 kilometers) in some areas over the past century, and some of the dry land where the river once flowed belonged to the government, not residents who claimed ownership.” The landowners’ lawyer, Robert Henneke, said BLM’s claims “amounted to an unlawful federal land grab.” Henneke explained the settlement “contains three provisions, including the one dictating that the river, wherever it may flow now and in decades to come, constitutes the boundary. Federal officials will dismiss the land surveys that were previously done, Henneke said, and the BLM will issue a disclaimer on maps the agency previously released showing federal boundaries that extended into Texas.”

Federal Vacancies Would Impede Recovery From Next Drought, Natural Resources Secretary Says.

The Santa Cruz (CA) Sentinel (11/11, Todd) reported California Secretary for Natural Resources John Laird said after the Democratic Women’s Club of Santa Cruz County meeting Saturday that the state would be in danger if another drought occurs because federal support remains uncertain. The Trump Administration has yet to fill “high-level vacancies for a slate of federal departments,” including the Bureau of Reclamation, which still lacks a commissioner. During the previous drought, “five agencies — two state departments and three federal departments — were in control of California’s water supply, Laird said.” Negotiations between state and federal agencies were vital “in providing timely relief, Laird said. Under the Obama administration, federal support was outlined within 24 hours.”

Catharsis Brings Burning Man Spirit To Nation’s Capital.

The AP (11/10, Khalil) reported on Catharsis on the Mall, a three-day event “that seeks to bring a small slice of the famed Burning Man festival to the foot of the Washington Monument.” The event began Friday afternoon and continued “the-clock through Sunday with seminars, events and performances in tents, stages and camps.” A “massive” metal dragon “will roll through the streets around the Capitol during a protest march at dawn Sunday. On Saturday night, a small wooden temple will be set ablaze under the close eye of fire marshals.” The AP said “R-Evolution, a 47-foot-high sculpture of a nude woman in a yoga pose that was featured at this year’s Burning Man,” would not be at the festival after the Interior Department reversed course on permission that was initially given by the National Park Service.

Park Service Wants To Ban Sports From Washington Monument Grounds.

The Washington Post (11/9, Ruane) reported the National Park Service said Thursday “that it wants to permanently close the grounds of the Washington Monument to recreational activities and increase reservation fees for use of its 28 athletic fields on the Mall and in Rock Creek Park.” NPS spokesman Mike Litterst said in an email that the Washington Monument ground “were closed earlier this year for turf restoration, and the Park Service wants that closure to continue after the project is finished this year.” The proposal would also increase reservation rate fees to “\$70 per two-hour block — \$30 an hour plus a \$10 administrative fee,” and “permitting will shift from the D.C. Department of Parks and Recreation to the National Park Service, the owner of the fields, Litterst said.”

DEPARTMENT PRESS RELEASES

Secretary Zinke & BLM invite sportsmen to enjoy upcoming deer season at the Sabinoso Wilderness
Donation of 3,500 Acres of land made the Sabinoso publicly accessible for first time ever

Taos, N.M. – U.S. Secretary of the Interior Ryan Zinke and the Bureau of Land Management are pleased to announce that the Sabinoso Wilderness – which contains some of the most pristine habitat in the country for elk, mule deer, and other wildlife – is for the first time ever accessible to the public for hunting, fishing, and other recreational activities. The 16,000-acre Sabinoso was previously wholly surrounded by non-federal land, making it inaccessible to the general public. However, a donation of 3,595 acres (formerly known as the Rimrock Rose Ranch) that are adjacent to Sabinoso Wilderness was accepted by the Secretary and is now public.

"I'm happy to announce today the Sabinoso Wilderness Area is finally open and accessible to hunters and all members of the public for the first time ever," **said Secretary Zinke**. "Expanding access to hunting, fishing, and recreation on federal lands is one of my top priorities as Secretary. I originally had concerns about adding more wilderness-designated area, however after hiking and riding the land it was clear that access would only be improved. Thanks to the donation of a private organization, we we continue to move toward delivering this nonpartisan win for sportsmen and the community."

"The BLM strives to be a good neighbor in the communities we serve, and along with our partners we are pleased to better connect the public to the Sabinoso," **said Acting BLM Director Michael D. Nedd**. "This action will provide folks with exceptional opportunities for hunting and fishing, as well as outdoor activities such as hiking, horseback riding, and backcountry camping in a pristine environment."

"The Mule Deer Foundation commends Secretary Zinke on the completion of this project which will go a long way toward expanding and enhancing opportunities to access otherwise difficult to reach lands," **said Miles Moretti, President/CEO of MDF**. "This is yet another example of Secretary Zinke's execution of a pro-sportsman policy agenda which he announced immediately upon being sworn in to his position."

"For years, hunters and anglers have called on Congress and federal agencies to help us gain access to landlocked public lands. We applaud Secretary Zinke for his commitment to this priority and look forward to 'unlocking the gate' so that America's sportsmen and women can experience what the Sabinoso has to offer by truly 'Making Public Lands Public,'" **said Jeff Crane, President of the Congressional Sportsmen's Foundation**.

Encompassing approximately 16,000 acres in northeastern New Mexico, the Sabinoso Wilderness previously was fully surrounded by private land, making it inaccessible to the public. However, by adding the donated land – approximately 3,500 acres formerly known as the Rimrock Rose Ranch – the Sabinoso now connects with neighboring BLM-managed land, making it publicly accessible for the first time since its Congressional designation as a Wilderness Area in 2009.

Now that the area is fully accessible, the BLM invites the public to experience the Sabinoso's unique and wild beauty. However, please be aware that Sabinoso is a wilderness area, and along with that designation the following items are prohibited: motorized vehicles and equipment, aircraft (including drones), and mechanical transport including off-road vehicles and bicycles.

For more information, please visit <https://www.blm.gov/programs/national-conservation-lands/new-mexico/sabinoso-wilderness> or call acting BLM Taos Field Manager Brad Higdon at 575-758-1620.

FEDERAL REGISTER LISTINGS:

Sent to the Federal Register on November 10th.

REG0007515 FWS Issuance of Import Permits for Zimbabwe Elephant Trophies Taken on or After January 21, 2016 and on or before December 31, 2018 -- This notice announces to the public that the Service has made a finding that the killing of African elephant trophy animals in Zimbabwe on or after 1/21/2016 and before or on 12/31/2018 meets the ESA criteria for authorizing imports. Notice 11/09/2017

REG0007605 NPS Request for Nominations: National Park System Advisory Board -- The FR notice requests nominations for the appointment of three members to the National Park System Advisory Board. Notice 11/09/2017

To: Robert Henneke[rhenneke@texaspolicy.com]
From: Douglas Domenech
Sent: 2017-04-05T06:08:29-04:00
Importance: Normal
Subject: Re: Thursday
Received: 2017-04-05T06:08:36-04:00

Yes we had some email issues yesterday.

Sent from my iPhone

On Apr 4, 2017, at 11:54 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Thank you, Doug. This is outstanding – I very much appreciate you pulling these together.

Side note – your email says it was sent at 7:35am, but I didn't receive until after 8:30pm.
No idea why the delay.

I'll be there no later than 9:30am.

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
Date: Tuesday, April 4, 2017 at 7:35 AM
To: Robert Henneke <rhenneke@texaspolicy.com>
Subject: Thursday

Rob this is what is scheduled.

Location: Room 6120 in the Main Interior Building at 1849 C Street, NW. 6th floor.
South end of the building next to the Secretary's Office. Check in with guard.

10:00 am to 10:30 am FWS Issues with:

Jim Cason - Acting Deputy Secretary

Virginia Johnson - Special Assistant, Assistant Secretary Fish Wildlife and Parks

Casey Hammond - Special Assistant, Fish and Wildlife Service Dan

Jorjani - Acting Principal Deputy Solicitor Doug Domenech

10:30 am to 11:00 am BLM Issue with:

Jim Cason (above)

Kathy Bennedetto - Special Assistant, BLM Kate MacGregor - Special Assistant,

Assistant Secretary Land and Minerals Dan Jorjani (above) Doug

Domenech

NOTE these are 30 minutes back-to-back meetings so suggest you get here early to process in (9:30 am). In my experience these folks will have tight schedules so it is unlikely the meetings can go long.

Looking forward to seeing you. Call my cell when you arrive at the building and I will

try to come get you. 202-255-9842.

Doug Domenech
Senior Advisor
US Department of the Interior

To: Robert Henneke[rhenneke@texaspolicy.com]; Douglas Domenech[douglas_domenech@ios.doi.gov]
From: Sheehan, Gregory
Sent: 2017-07-22T21:25:51-04:00
Importance: Normal
Subject: Re: Rob Henneke contact information
Received: 2017-07-22T21:25:55-04:00

Thanks Rob

It was good talking with you yesterday afternoon about the Dune Lizard. I will also be talking with Glenn Hegar to set up a meeting to learn more. Also to get some of my folks involved so I can hear any challenges or strategies they may have to move forward.

Thanks again
Greg

On Fri, Jul 21, 2017 at 6:51 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Greg,

It was a pleasure to meet you over the phone today. Thank you for your time. Please see below for my contact information.

Rob Henneke

+++++

Robert Henneke

General Counsel &
Director, Center for the American Future
Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78701
(512) 472-2700 (o)
rhenneke@texaspolicy.com
www.americanfuture.com
facebook.com/centerfortheamericanfuture
[@robhenneke](#)

The contents of this email message and any attachments are intended solely for the addressee(s) named in this message. This communication is intended to be and to remain confidential and may be subject to applicable attorney/client and/or work product privileges. If you are not the intended recipient of this message, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and its attachments. Do not deliver, distribute, or copy this message and/or any attachments and if you are not the intended recipient, do not disclose the contents or take any action in reliance upon the information contained in this communication or any attachments.

--

Greg Sheehan, Acting Director
Principle Deputy Director

US Fish and Wildlife Service
1849 C Street NW, Room 3358
Washington, DC 20240
202-208-4545

To: Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Robert Henneke
Sent: 2017-04-04T23:55:56-04:00
Importance: Normal
Subject: Re: Thursday
Received: 2017-04-04T23:54:21-04:00

Thank you, Doug. This is outstanding – I very much appreciate you pulling these together.

Side note – your email says it was sent at 7:35am, but I didn't receive until after 8:30pm. No idea why the delay.

I'll be there no later than 9:30am.

From: "Domenech, Douglas" <douglas_domenech@ios.doi.gov>
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To: Robert Henneke <rhenneke@texaspolicy.com>
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10:00 am to 10:30 am FWS Issues with:

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Virginia Johnson - Special Assistant, Assistant Secretary Fish Wildlife and Parks Casey Hammond - Special Assistant, Fish and Wildlife Service Dan Jorjani - Acting Principal Deputy Solicitor Doug Domenech

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Jim Cason (above)

Kathy Bennedetto - Special Assistant, BLM Kate MacGregor - Special Assistant, Assistant Secretary Land and Minerals Dan Jorjani (above) Doug Domenech

NOTE these are 30 minutes back-to-back meetings so suggest you get here early to process in (9:30 am). In my experience these folks will have tight schedules so it is unlikely the meetings can go long.

Looking forward to seeing you. Call my cell when you arrive at the building and I will try to come get you. 202-255-9842.

Doug Domenech
Senior Advisor
US Department of the Interior

To: Domenech, Douglas[douglas_domenech@ios.doi.gov]
Cc: Daniel Jorjani[daniel_jorjani@ios.doi.gov]
From: Kaleb Bennett
Sent: 2017-07-17T08:27:19-04:00
Importance: Normal
Subject: RE: Introduction to Kaleb Bennett
Received: 2017-07-17T08:27:32-04:00

Doug,

We'd be more than happy to meet with Daniel. Daniel, please let me know if you have time late Wednesday afternoon or Thursday morning/early afternoon.

Thank you and take care,

KB

Kaleb Bennett
Deputy Director Federal Legislative Affairs
Commissioner George P. Bush
Texas General Land Office
512-463-5363 (direct)
405-474-3581 (cell)

From: Domenech, Douglas [mailto:douglas_domenech@ios.doi.gov]
Sent: Friday, July 14, 2017 9:05 AM
To: Kaleb Bennett <Kaleb.Bennett@GLO.TEXAS.GOV>
Cc: Daniel Jorjani <daniel_jorjani@ios.doi.gov>
Subject: Re: Introduction to Kaleb Bennett

Kaleb - Thanks for the email. If possible, I would like to refer you to Dan Jorjani our Principal Deputy Solicitor (and Acting Solicitor). He is better suited to take the meeting. I am copying him on the email.

Thanks.

Doug Domenech

Doug Domenech
Senior Advisor
US Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

On Wed, Jul 12, 2017 at 3:23 PM, Kaleb Bennett
<Kaleb.Bennett@glo.texas.gov<mailto:Kaleb.Bennett@glo.texas.gov>> wrote:
Thanks for the introduction, Rob. I certainly appreciate it.

Doug,

As you may know, my office is involved with the Red River issue between the BLM and the Texas General Land Office.

I was hoping you have some availability either the afternoon of July 19 or the morning/early afternoon of July 20 for a meeting to discuss the Red River.

Attending the meeting would be me and GLO special counsel, Hector Valle.

Thank you for your assistance and I look forward to hearing from you.

Take care,

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From: Robert Henneke
[mailto:rhenneke@texaspolicy.com<mailto:rhenneke@texaspolicy.com>]
Sent: Wednesday, July 12, 2017 1:45 PM
To: Domenech, Douglas
<douglas_domenech@ios.doi.gov<mailto:douglas_domenech@ios.doi.gov>>
Cc: Kaleb Bennett
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Thanks,

Rob

To: Kaleb Bennett[Kaleb.Bennett@glo.texas.gov]
Cc: Domenech, Douglas[douglas_domenech@ios.doi.gov]; Daniel Jorjani[daniel_jorjani@ios.doi.gov]; marigrace.caminiti@sol.doi.gov[marigrace.caminiti@sol.doi.gov]
From: Daniel Jorjani
Sent: 2017-07-17T08:44:12-04:00
Importance: Normal
Subject: Re: Introduction to Kaleb Bennett
Received: 2017-07-17T08:44:18-04:00

Adding MG.

Sent from my iPhone

On Jul 17, 2017, at 8:28 AM, Kaleb Bennett <Kaleb.Bennett@glo.texas.gov> wrote:

Doug,

We'd be more than happy to meet with Daniel. Daniel, please let me know if you have time late Wednesday afternoon or Thursday morning/early afternoon.

Thank you and take care,

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Kaleb Bennett
Deputy Director Federal Legislative Affairs
Commissioner George P. Bush
Texas General Land Office
512-463-5363 (direct)
405-474-3581 (cell)

From: Domenech, Douglas [mailto:douglas_domenech@ios.doi.gov]
Sent: Friday, July 14, 2017 9:05 AM
To: Kaleb Bennett <Kaleb.Bennett@GLO.TEXAS.GOV>
Cc: Daniel Jorjani <daniel_jorjani@ios.doi.gov>
Subject: Re: Introduction to Kaleb Bennett

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Thank you for your assistance and I look forward to hearing from you.

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Commissioner George P. Bush
Texas General Land Office
512-463-5363 (direct)
405-474-3581 (cell)

From: Robert Henneke
[<mailto:rhenneke@texaspolicy.com><<mailto:rhenneke@texaspolicy.com>>]

Sent: Wednesday, July 12, 2017 1:45 PM

To: Domenech, Douglas
<douglas_domenech@ios.doi.gov<mailto:douglas_domenech@ios.doi.gov>>
>>

Cc: Kaleb Bennett
<Kaleb.Bennett@GLO.TEXAS.GOV<<mailto:Kaleb.Bennett@GLO.TEXAS.GOV>>>

Subject: Introduction to Kaleb Bennett

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Thanks,

Rob

To: Kaleb Bennett[Kaleb.Bennett@glo.texas.gov]
Cc: Daniel Jorjani[daniel_jorjani@ios.doi.gov]
From: Domenech, Douglas
Sent: 2017-07-14T10:04:50-04:00
Importance: Normal
Subject: Re: Introduction to Kaleb Bennett
Received: 2017-07-14T10:05:17-04:00

Kaleb - Thanks for the email. If possible, I would like to refer you to Dan Jorjani our Principal Deputy Solicitor (and Acting Solicitor). He is better suited to take the meeting. I am copying him on the email.

Thanks.

Doug Domenech

Doug Domenech
Senior Advisor
US Department of the Interior

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To: Domenech, Douglas[douglas_domenech@ios.doi.gov]
Cc: Daniel Jorjani[daniel_jorjani@ios.doi.gov]
From: Daniel Jorjani
Sent: 2017-07-14T09:51:39-04:00
Importance: Normal
Subject: Re: Introduction to Kaleb Bennett
Received: 2017-07-14T09:51:49-04:00

Of course. MG can set it up.

Sent from my iPhone

On Jul 14, 2017, at 9:48 AM, Domenech, Douglas <douglas_domenech@ios.doi.gov> wrote:

I think it would be better for you and perhaps Jim or Todd to meet with these people. I am happy to attend but, as far as I know, we the Department is in litigation over this issue with my former employer, TPPF, as the plaintiff. The meeting would be with the State of Texas. If you agree I will direct them to you.

Doug Domenech
Senior Advisor
US Department of the Interior

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----- Forwarded message -----

From: Kaleb Bennett <Kaleb.Bennett@glo.texas.gov>
Date: Wed, Jul 12, 2017 at 3:23 PM
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To: Robert Henneke[rhenneke@texaspolicy.com]; Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Kaleb Bennett
Sent: 2017-07-12T15:23:58-04:00
Importance: Normal
Subject: RE: Introduction to Kaleb Bennett
Received: 2017-07-12T15:24:11-04:00

Thanks for the introduction, Rob. I certainly appreciate it.

Doug,

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Rob

To: Robert Henneke[rhenneke@texaspolicy.com]
Cc: casey_hammond@ios.doi.gov[casey_hammond@ios.doi.gov]; Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Virginia Johnson
Sent: 2017-05-22T12:01:07-04:00
Importance: Normal
Subject: Re: George Will's column about the BCH lawsuit
Received: 2017-05-22T12:01:19-04:00

Thanks so much. I had not seen.
Virginia

On May 22, 2017, at 10:16 AM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

I wanted to make sure that you saw George Will's column in yesterday's Washington Post discussing the commerce clause constitutional issue in the bone-cave harvestman lawsuit

https://www.washingtonpost.com/opinions/federal-power-creeps-its-way-toward-controlling---spiders/2017/05/19/1e7189bc-3caf-11e7-a058-dbb23c75d82_story.html?utm_term=.e82705c5e369

Federal power creeps its way toward controlling . . . spiders?

Law books and a gavel. (iStock/iStock)

By George F. Will Opinion writer May 19

A blind spider creeping through America's judicial thicket might be heading to the Supreme Court, which will have to decide if the contentment or even the survival of the Bone Cave Harvestman spider species, which lives only in two central Texas counties, is any of the federal government's

business. If it is, what isn't?

The U.S. Fish and Wildlife Service (USFWS), which administers the Endangered Species Act, is blind to the limits of its imperium, which it thinks encompasses telling John Yearwood what he can and cannot do on the ranch that has been in his family since 1871. To stymie the USFWS, Yearwood must surmount, among other things, a precedent involving Roscoe Filburn, the Ohio farmer whose 1942 loss in the Supreme Court mocked the doctrine that the federal government is one of limited, because enumerated, powers.

Filburn was minding what he thought was his business when Washington taught him that the Constitution's commerce clause ("Congress shall have power to . . . regulate commerce . . . among the several states") means that almost everything is the federal government's business. To stabilize prices, the government set production quotas not only for wheat sold into interstate commerce but for wheat consumed on the farm for animal feed. Filburn expressed his dissent by producing 269 bushels in excess of his quota and refusing to pay the fine.

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His insubordination reached the Supreme Court, which by then was thoroughly deferential to the New Deal's capacious theory of federal power. The court held

that Congress could regulate even Filburn's wheat that never reached interstate commerce, because that wheat "supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce."

Seventy-five years on, recent decisions have brought commerce clause jurisprudence closer to the Founding Fathers' intention as presented by Chief Justice John Marshall in *McCulloch v. Maryland* (1819). The clause requires a "plain" connection, not merely attenuated chains of inferences, between a congressional act and an enumerated power. Furthermore, recent decisions require not only that a federal statute pertain to "activities having a substantial relation to interstate commerce," but also that the statute pass muster under the necessary and proper clause: Congress may "make all laws . . . necessary and proper" to executing enumerated powers. A statute, Justice Clarence Thomas has said, must be "appropriate," bearing an "obvious, simple, and direct relation" to an enumerated power.

A lower court has sided with the USFWS against Yearwood, dogmatically postulating that all species are "interdependent." Therefore, even the tiniest bit of the ecosystem is presumptively implicated in potentially substantial effects on interstate commerce.

So, Yearwood, who hitherto made his property available cost-free to 4-H, church and military groups for camping, horseback riding and other activities, has stopped this, and even ceased clearing brush to reduce the risk of snakes and fires, lest he be subject to federal prosecution for disturbing, harming or endangering the spiders. Indeed, such is the federal government's unsleeping solicitude for the spiders, it says they must be protected from other bugs, such as fire ants. Reverence for nature evidently requires preventing natural competitions.

Judge Alex Kozinski of the U.S. Court of Appeals for the 9th Circuit has written that modern commerce clause decisions make one wonder why it is not called the "Hey, you-can-do-whatever-you-feel-like clause." So far, the spider story — the application of the Endangered Species Act to an entirely intrastate species that is neither bought nor sold nor traded in interstate commerce — demonstrates that federal power, like kudzu, will expand everywhere and into everything until it is stopped.

The Supreme Court can stop it if the spider case gets there. The court can apply its 2005 ruling that congressional regulation of intrastate, noncommercial activity is proper only when the activity is an "essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated."

Furthermore, in 2012, while Chief Justice John G. Roberts Jr. was irritating conservatives as he saved the Affordable

Care Act by creatively construing some of its provisions, he simultaneously held that even a necessary exercise of power under the commerce clause is not proper if it “would work a substantial expansion of federal authority.” The blind spider might make other courts, and the rest of the government, see the Supreme Court’s 1995 ruling that the government may not “convert congressional Commerce Clause authority to a general police power of the sort held only by the states.”

Read more from George F. Will’s archive or follow him on Facebook.

To: Domenech, Douglas[douglas_domenech@ios.doi.gov]
Cc: Robert Henneke[rhenneke@texaspolicy.com]; Katharine Macgregor[kate_macgregor@ios.doi.gov]
From: Macgregor, Katharine
Sent: 2017-04-07T08:54:16-04:00
Importance: Normal
Subject: Re: Emails
Received: 2017-04-07T08:54:23-04:00

Hey Robert - Great to meet you. I want to hear more about the spider suit.
-K

On Fri, Apr 7, 2017 at 8:46 AM, Domenech, Douglas <douglas_domenech@ios.doi.gov> wrote:

Great seeing you.

You met with:

Jim Cason, Acting Deputy Secretary. james_cason@ios.doi.gov
Casey Hammond, Special Assistant, FWS: casey_hammond@ios.doi.gov
Virginia Johnson, Special Assistant, ASFWP: virginia_johnson@ios.doi.gov
Kate McGregor, Deputy Assistant Secretary Land and Minerals: kate_macgregor@ios.doi.gov

Doug Domenech
Senior Advisor
US Department of the Interior

--

Kate MacGregor
1849 C ST NW
Room 6625
Washington DC 20240

202 208 3671 (Direct)

To: Robert Henneke[rhenneke@texaspolicy.com]
Cc: casey_hammond@ios.doi.gov[casey_hammond@ios.doi.gov]; Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Johnson, Virginia
Sent: 2017-05-08T19:02:40-04:00
Importance: Normal
Subject: Re: bone-cave harvestman lawsuit
Received: 2017-05-08T19:02:46-04:00

Thanks, Rob.

It was a genuine pleasure to meet you here in DC. Please keep us posted!

Virginia

On Mon, May 8, 2017 at 6:17 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/endangered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

Sincerely,

Rob Henneke

+++++

Robert Henneke

General Counsel &

Director, Center for the American Future

Texas Public Policy Foundation

901 Congress Avenue

Austin, Texas 78701

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--

Virginia H. Johnson
Special Assistant to the Secretary
U.S. Department of the Interior
Telephone: (202) 208-4943

To: Robert Henneke[rhenneke@texaspolicy.com]
From: Domenech, Douglas
Sent: 2017-05-09T08:05:40-04:00
Importance: Normal
Subject: Re: bone-cave harvestman lawsuit
Received: 2017-05-09T08:06:07-04:00

Keep fighting.

Doug Domenech
Senior Advisor
US Department of the Interior

On Mon, May 8, 2017 at 6:17 PM, Robert Henneke <rhenneke@texaspolicy.com> wrote:

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/endangered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

Sincerely,

Rob Henneke

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attachments.

To: Domenech, Douglas[douglas_domenech@ios.doi.gov]
Cc: Kaleb Bennett[Kaleb.Bennett@GLO.TEXAS.GOV]
From: Robert Henneke
Sent: 2017-07-12T14:44:41-04:00
Importance: Normal
Subject: Introduction to Kaleb Bennett
Received: 2017-07-12T14:43:54-04:00

Doug,

Via this email, I'd like to introduce you to Kaleb Bennett. Kaleb serves as the Deputy Director for Federal Legislative Affairs for the Texas General Land Office and asked to be connected regarding his upcoming trip to WDC.

Thanks,

Rob

To: Virginia Johnson[virginia_johnson@ios.doi.gov]
Cc: casey_hammond@ios.doi.gov[casey_hammond@ios.doi.gov]; Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Robert Henneke
Sent: 2017-06-05T14:57:13-04:00
Importance: Normal
Subject: golden-cheeked warbler lawsuit
Received: 2017-06-05T14:56:05-04:00
[GLO GCW Complaint.pdf](#)

Virginia,

I wanted to make you aware that we filed today the attached lawsuit involving ESA regulation of the golden-cheeked warbler. This is the effort we discussed that raises the NEPA issue as well as the lack of critical habitat designation in addition to the scientific basis for delisting. TPPF represents the Texas General Land Office as the plaintiff.

We see the message of this case as a success story for conservation and the Endangered Species Act. Relying upon the 2015 Texas A&M University Institute of Renewable Natural Resources, the most recent and best available science, data shows that the GCW is no longer endangered or threatened. In addition, utilization of NEPA in connection with listing/delisting decisions would bring more balance to ESA considerations.

Please let me know if you have any questions about this lawsuit. As next steps, I hope that USFWS and DOJ will expedite the filing of its answer and administrative record so we may begin fully addressing the merits of the legal issues raised.

Sincerely,

Rob

+++++

Robert Henneke

General Counsel &

Director, Center for the American Future

Texas Public Policy Foundation

901 Congress Avenue

Austin, Texas 78701

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**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

GENERAL LAND OFFICE
OF THE STATE OF TEXAS,

Plaintiff,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE; UNITED STATES
DEPARTMENT OF THE INTERIOR;
RYAN ZINKE, in his official capacity as
Secretary for the United States of the Interior;
JIM KURTH, in his official capacity as
Acting Director of the U.S. Fish and Wildlife
Service; and
DR. BENJAMIN N. TUGGLE, in his official
capacity as Southwest Regional Director U.S.
Fish and Wildlife Service,

Defendants.

Civ. No. 1:17-cv-538

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff General Land Office of the State of Texas (“TXGLO” or “Plaintiff”) files this Complaint against Defendants due to their ongoing violation of federal law involving Endangered Species Act regulation of the Golden-Cheeked Warbler.

INTRODUCTION

1. This is an action for declaratory judgment and injunctive relief by the TXGLO against the U.S. Fish and Wildlife Service (sometimes referred to hereinafter as the “Service”), and the U.S. Department of the Interior, as well as Ryan Zinke, Jim Kurth, and Dr. Benjamin Tuggle in their official capacities (collectively “Federal Defendants”) for violating statutory law. Federal Defendants violated the Endangered Species Act (“ESA”) (16 U.S.C. §1531, *et seq.*) and

its implementing regulations (50 C.F.R. §424.01, *et seq.*), as well as the Administrative Procedure Act (“APA”) (5 U.S.C. §551 *et seq.*) by: 1) maintaining the Golden-Cheeked Warbler (“Warbler”) in endangered status for over 26 years while simultaneously failing to designate critical habitat; 2) failing to delist the Warbler in response to the 2015 Petition to Delist and supporting 2015 study produced by the Texas A&M Institute of Renewable Natural Resources (“Delisting Petition”); and 3) failing to comply with the National Environmental Policy Act (“NEPA”), both before listing the Warbler as endangered and prior to denying the Delisting Petition.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction), §1346(a)(2) (civil action against the United States), §2201 (authorizing declaratory relief), §2202 (authorizing injunctive relief), 16 U.S.C. §1540(c), (g) (actions arising under the ESA), and 5 U.S.C. §702 (providing for judicial review of agency action under the Administrative Procedure Act).

3. On March 1, 2017, more than 60 days prior to the filing of the instant complaint, Plaintiff provided Defendants written notice of violation in accordance with 16 U.S.C. §1540(g)(2)(C). Defendants did not respond to the 60-day notice. A true and correct copy of 60-day notice is attached hereto as Exhibit 1 and hereby incorporated by reference. Plaintiffs have receipts for the delivery of the 60-day notice to all Defendants, and delivery confirmation is attached hereto as Exhibit 2, which is hereby incorporated by reference.

4. Venue in this judicial district and division is proper under 5 U.S.C. §703 and 28 U.S.C. §1391(e)(1) because the Plaintiff resides in Austin, and 16 U.S.C. §1540(g)(3)(A) because the violation occurred in this district. Furthermore, the venue of this judicial district and division is appropriate under 28 U.S.C. §1391(e)(1)(B) because the primary authors of the decision denying

the Plaintiff's Petition to Delist were staff members of the Service's Austin Ecological Services Field Office in Austin at the time of the denial.

5. Declaratory relief is authorized by 28 U.S.C. §§2201 and the Federal Rules of Civil Procedure, Fed.R.Civ.P. 57. Injunctive relief is authorized by 28 U.S.C. §§2202 and the Federal Rules of Civil Procedure, Fed.R.Civ.P. 65.

PARTIES

A, PLAINTIFF

6. Plaintiff TXGLO is the oldest state agency in Texas and, among other things, is charged part maximizing revenues from Texas public lands dedicated to the Permanent School Fund. TXGLO derives those revenues from the sale and mineral leasing of public school lands, which under the Texas Constitution flow to the Permanent School Fund via TXGLO. T.X. Const. Art. VII §5(g). TXGLO also owns and maintains State Veterans Homes that provide care and dignity for veterans, their spouses, and Gold Star parents, as well as State Veterans Cemeteries to honor those who have served.

7. TXGLO owns or maintains public school lands which contain Warbler habitat.

8. The ability of TXGLO to maximize revenues from Texas public school lands, and to maintain State Veterans Cemeteries and State Veterans Homes to a high standard is undermined by restrictions imposed due to the presence of Warblers on TXGLO property.

9. The presence of Warblers on TXGLO property has lowered the market value of those properties.

10. The presence of Warblers on TXGLO property subjects certain TXGLO's actions on its property to the time consuming and costly requirements of Sections 7 and 9 of the ESA.

11. Delisting the Warbler will provide immediate relief for the TXGLO because TXGLO property will no longer be affected by diminution in market value attributable to Warbler presence on the property, and the property will no longer be subject to the time consuming and costly requirements of Sections 7 and 9 of the ESA.

B. DEFENDANTS

12. Defendant United States Fish and Wildlife Service is an agency of the Department of the Interior. The Service has been delegated responsibility by the Secretary of the Interior for the day-to-day administration of the ESA, including listing of threatened and endangered terrestrial species and the designation of their critical habitat. The United States Fish and Wildlife Service may be served at 1849 C. St., N.W., Washington, D.C. 20240.

13. Defendant United States Department of the Interior is an agency of the United States. Congress has charged the Department with administering the ESA for terrestrial species. The United States Department of the Interior may be served in accordance with FED. R. CIV. P. 4(i)(2) by serving the United States Department of the Interior, 1849 C. St., NW, Washington, D.C. 20240.

14. Defendant Ryan Zinke is the Secretary of the United States Department of the Interior. He oversees the Department's administration of the ESA and is sued in his official capacity. Secretary Zinke may be served in accordance with FED. R. CIV. P. 4(i)(2) by serving Secretary Ryan Zinke, United States Department of the Interior, 1849 C St., N.W., Washington, D.C. 20240.

15. Defendant Jim Kurth is the Acting Director of the United States Fish and Wildlife Service. He oversees the Service's administration of the ESA and is sued in his official capacity. Mr. Jim Kurth may be served at 1849 C. St., N.W., Washington, D.C. 20240.

16. Defendant Benjamin Tuggle is Southwest Regional Director of the United States Fish and Wildlife Service. He oversees the Service's administration of the ESA with respect to a region that includes the State of Texas and is sued in his official capacity. Dr. Benjamin Tuggle may be served at U.S. Fish and Wildlife Service, 500 Gold Ave., S.W., Albuquerque, N.M. 87102.

17. All of the Federal Defendants are responsible for the violations alleged in this complaint.

LEGAL FRAMEWORK

Listing of Threatened or Endangered Species

18. Before a species receives full protection under the ESA, it must be listed as "threatened" or "endangered." A "threatened" species is "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. §1532(20). An "endangered" species is one "which is in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. §1532(6). The listing determination must be based on certain factors using the "best scientific and commercial data available." 16 U.S.C. §1533(b)(1)(A). Economic or other factors may not be considered in making a listing determination.

19. A species will be listed if it is endangered or threatened due to any one or a combination of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, recreational, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms, or
- (5) Other natural or manmade factors affecting its continuing existence.

50 C.F.R. §424.11(c)(1)-(5).

20. Only listed “endangered” species are specifically protected by Section 9 of the ESA, which, among other things, makes it unlawful for any person to “take” such species. *See* 16 U.S.C. §1538(a)(1)(b).

21. The term “take” under the ESA means to “harass, harm, hunt, pursue, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” 16 U.S.C. §1532(19).

22. Congress applied the protections for endangered species found in 50 C.F.R. §17.21 to threatened species¹ if the Service applies those protections to rulemaking. 50 C.F.R. §17.31.

23. Prohibited actions under the ESA include import or export, take, possession and specified other acts, including but not limited to engaging in interstate or foreign commerce, and sale or offering for sale a threatened or endangered species, as the case may be. 50 C.F.R. §17.21(a)-(f).

24. Under Section 7 of the ESA, federal agencies must engage in a consultation process with the Secretary of the Interior if they believe their project on any property may affect endangered or threatened species.

Delisting of Threatened or Endangered Species

25. Every five years the Secretary of the Interior must conduct a status review of each listed species to determine whether a change in the species’ listing status is warranted. 16 U.S.C. §1533(c)(2)(A). During such status reviews, the Secretary must determine whether any species should: (i) be removed from such list; (ii) be changed in status from an endangered species to a threatened species; or (iii) be changed in status from a threatened species to an endangered species. 16 U.S.C. §1533(c)(2)(B).

¹ With the exception of 50 C.F.R. §17.21(c)(5), which is not relevant to the instant matter.

26. A species may be delisted if, after a review of the species, the best scientific and commercial data substantiates that the species is neither threatened nor endangered due to extinction, recovery, or if the original data for classification was in error. 50 C.F.R. 424.11(d).

27. The factors considered when delisting a species are the same as those when listing a species. 50 C.F.R. §424.11(d). Additionally, a species may be delisted only if the best scientific and commercial data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (i) Extinction, (ii) Recovery, or (ii) Original data for classification in error. 50 C.F.R. §424.11(d)(1)-(3).

Critical Habitat Designation

28. The purpose of the ESA is to provide a way to conserve the ecosystems upon which endangered and threatened species depend upon. 16 U.S.C. §1531(b).

29. To achieve that purpose, under Section 4 of the ESA, when listing a species as threatened or endangered, the government has a concurrent duty to designate critical habitat for that species “to the maximum extent prudent and determinable.” 16 U.S.C. §1533(a)(3)(A)(i).

Critical habitat is defined as:

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act [15 U.S.C. §1533], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act [15 U.S.C. §1533], upon a determination by the Secretary that such areas are essential for the conservation of the species.

16 U.S.C. §1532(5)(A).

30. In the proposed and final listing rules, the Secretary must state his or her reasons for failing to designate critical habitat. 50 C.F.R. §424.12(a). The Service defines “not prudent” as when any of the following situations exist:

- (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or
- (ii) Such designation of critical habitat would not be beneficial to the species, including for reasons that the present or threatened change to the species habitat or range does not pose a threat to the species, or whether any areas meet the definition of “critical habitat.”

Designation of critical habitat is “not determinable” when one or both of the following situations exist:

- (i) There is insufficient data to perform required analyses; or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of “critical habitat.”

50 CFR § 424.12(a)(1) & (2).

Consultation under the ESA

31. In consultation with the Secretary of the Interior, federal agencies are required to ensure that any action they authorize, fund, or carry out “is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. §1536(a)(2). Section 7 of the ESA also requires a federal agency to consult with the Secretary at the request of a permit applicant, if the applicant “has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.” 16 U.S.C. §1536(a)(3).

32. Under Section 7, the Secretary must provide the consulting federal agency and applicant with a Biological Opinion summarizing the basis for the opinion and detailing how the project will impact a species or its critical habitat. See 16 U.S.C. §1536(b)(3)(A). If jeopardy or adverse modification is found, the opinion must suggest “reasonable and prudent alternatives” that may be taken by the consulting agency or applicant to avoid jeopardy to the species or adverse modification of critical habitat. *Id.*

33. If it is determined that the “taking of an endangered species or a threatened species incidental to the agency action” will not jeopardize the species’ continued existence or result in the destruction or adverse modification of critical habitat of such species, a written (incidental take) statement must be issued that (1) specifies the impact of such incidental taking on the species; (2) specifies those reasonable and prudent measures that are necessary or appropriate to minimize such impact; and (3) sets forth the terms and conditions with which the agency or applicant must comply to implement the specified measures. 16 U.S.C. §1536(b)(4)(B)(i), (ii) and (iv).

Citizen Suits Under the ESA

34. The ESA’s citizen suit provision, 16 U.S.C. §1540(g), permits any person to commence a civil suit on his own behalf under several circumstances, one of which is a suit “against the Secretary where there is alleged failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.” 16 U.S.C. §1540(g)(1)(C).

35. The citizen suit provision negates the “zone of interests” test of prudential standing by broadly providing that “any person may commence a civil suit” to enforce the ESA. 16 U.S.C. §1540(g)(1); *Bennett v. Spear*, 520 U.S. 154, 164 (1997).

Administrative Procedure Act

36. Pursuant to the APA, a court must hold unlawful and set aside agency action, findings, and conclusions that are: “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. §706(2)(A)-(D).

37. Section 704 of the APA states that “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C. §704.

National Environmental Policy Act

38. The National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321, *et seq.*, requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public of the environmental concerns that went into the agency’s decision-making. Among other things, NEPA requires “to the fullest extent possible” all agencies of the federal government to prepare environmental impact statements (“EIS”) for any “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. §4332(C). An EIS must include:

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Id.

39. NEPA implementing regulations provide federal agencies with the opportunity to prepare an environmental assessment (“EA”), which determines either that an EIS is required, or concludes with a finding of no significant impact, which terminates the agency’s NEPA obligations. 40 C.F.R. §1508.9. Federal agencies must comply with NEPA “to the fullest extent possible.” 42 U.S.C. §4332.

40. Until September 21, 1983, the Service prepared EAs for all endangered species listing actions. 48 Fed. Reg. 49244-02. Acting upon recommendations from the Council on Environmental Quality, the Service adopted the Council’s judgment that Section 4 listing actions are exempt from NEPA review “as a matter of law.” *Id.*

FACTUAL ALLEGATIONS

Regulatory History of the Warbler

41. The Warbler was first mentioned by the Service in a Notice of Review published on December 30, 1982, as a species under consideration for addition to the List of Endangered and Threatened Wildlife. 47 Fed. Reg. 251, 58459. At that time, the Warbler was categorized as a species for which the Service had information indicating that a proposal to list the species was “possibly appropriate, but for which substantial data are not currently available to biologically support a proposed rule. Further biological research and field study will usually be necessary to ascertain the status of the taxa in this category, and it is likely that some of the taxa will not warrant listing.” *Id.* at 58454. The Warbler remained in that category for both the September 18, 1985 Review of Vertebrate Wildlife [50 Fed. Reg. 37958] and the January 6, 1989, Animal Notice of Review [54 Fed. Reg. 554].

42. On February 2, 1990, a petition was filed seeking an emergency listing for the Warbler, allegedly because the normal listing procedure could be “inadequate to protect the bird

and its habitat from imminent destruction from clearing and development.” 55 Fed. Reg. 18846, 18847.

43. On May 4, 1990, an emergency rule listing the Warbler as endangered was published concurrently with a proposed rule to provide for public comment. In the proposed rule, the Service stated that after “an extensive review of the status of the golden-cheeked Warbler,” it had determined that an “emergency posing a significant risk to the well-being of the golden-cheeked Warbler” existed. *Id.* at 18847.

44. In the proposed rule, the Service did not propose to designate critical habitat because it concluded that “critical habitat is not presently determinable.” *Id.* at 18848.

45. The emergency rule cited past habitat loss and planned development in Travis County and the City of Austin as immediate threats to Warbler habitat, and also cited the risk of habitat destruction that might occur before the Warbler could go through the regular listing process. 55 Fed. Reg. 18844-45.

46. On December 27, 1990, the final rule listing the Warbler as endangered was published. 55 Fed. Reg. 53153. In the final rule, the Service listed multiple areas and development projects posing threats to Warblers. *Id.* at 53157-58.

47. In the final rule, the Service did not designate critical habitat. The Service stated that “[c]ritical habitat for this species remains undeterminable at this time.” *Id.* at 53156. The Service noted that although satellite mapping was used to identify Warbler habitat, “all the specific elements of the habitat that are critical to the survival of the golden-cheeked Warbler are not known.” *Id.* The Service stated that biological studies were being conducted to address the issue, and gave a deadline of May 4, 1992, to determine and designate critical habitat. *Id.*

48. As of the date of the filing of this Complaint, more than 25 years from the date the final listing rule was published, critical habitat for the Warbler has not been designated by the Service.

2015 Petition to Delist the Golden-Cheeked Warbler

49. On June 29, 2015, a group of petitioners submitted to the Service a petition to delist the Warbler. A true and correct copy of the Petition to Delist (“Petition”) is attached as Exhibit 3 and hereby incorporated by reference. The petitioners included Texans for Positive Economic Policy, Susan Combs, the Texas Public Policy Foundation, and the Reason Foundation.

50. The Petition provided substantial new scientific information indicating that delisting the Warbler is warranted, based upon a 2015 study on the Warbler conducted by the Texas A&M University Institute of Renewable Natural Resources (“Texas A&M Study”).

51. Included in the Petition was evidence documenting almost five times more Warbler breeding habitat and roughly nineteen times more Warblers in existence than was known at the time of the listing. *See* Petition, Ex. 3.

52. The Petition also provided scientific support showing that the Warbler does not currently meet the ESA’s definition of “endangered” or “threatened,” and is not today “in danger of extinction throughout all or a significant portion of its range,” and is unlikely to become so in the foreseeable future. *See* Petition, Ex. 3.

53. Finally, the Petition pointed to research indicating that there is consensus among the scientific community that breeding Warblers inhabit a much wider range of habitat types than were identified in the early studies on which the Service relied in making its listing determination.

Dismissal of Petition to Delist

54. On May 25, 2016, the Service issued a 90-Day Finding denying the Petition to Delist. A true and correct copy of the 90-Day Finding is attached as Exhibit 4 and hereby incorporated by reference.

55. In its analysis of Listing Factor A (the present or threatened destruction, modification, or curtailment of the species' habitat or range), the Service dismissed the Texas A&M Study as summarizing information already known to the Service and discussed in the most recent 5-year review, which the Service stated represents "the best available body of science known to the Service pertaining to the Status of the Warbler." In the next line of its analysis, the Service states that it "recognizes that the modeling studies described in the 2015 Texas A&M [Study] do represent the most recent and comprehensive efforts to estimate range-wide Warbler habitat and population size to date." *See* 90-Day Finding, Ex. 4.

56. In its analysis of Listing Factor C (disease or predation), the Service states that the Petition's claim that predation does not constitute a significant threat to the continued existence of the Warbler is refuted by the 2014 5-year review, which concluded that urbanization and habitat fragmentation "have likely resulted in increased rates of predation of Warbler nests by a wide variety of animal predators, especially rat snakes." The 2014 5-year review lists animals which have been known to prey on Warbler nests, which the Service acknowledges is a "natural occurrence in [Warbler] habitat." Extrapolating from this statement, the Service then states that increased urbanization leads to higher than normal levels of predation. *See* 90-Day Finding, Ex. 4.

57. In its analysis of Listing Factor D, the Service contends that "an estimated 29 per cent of existing breeding season habitat was lost between 1999-2001 and 2010-2011," and cites

“increasing urbanization” and “habitat loss” as reasons why the Warbler should not be delisted.

See 90-Day Finding, Ex. 4.

58. In its analysis of Listing Factor E, the Service states that “habitat fragmentation, habitat degradation, inappropriate habitat management practices, and excessive noise all contribute to reductions in overall Warbler habitat quality and present a real and significant threat to the long term viability of the species.” The 90-Day Finding does not cite any instances in which these conditions have occurred. *See* 90-Day Finding, Ex. 4.

59. The Service has never designated critical habitat for the Warbler.

60. In the conclusion of the 90-Day Finding, the Service states that the Texas A&M Study “does not present substantial information not previously addressed in the 2014 five-year review for this species and does not offer any substantial information indicating that the petitioned action to delist the species may be warranted.” *See* 90-Day Finding, Ex. 4.

61. The 2015 Texas A&M Study presents new information gathered after the publication of the 2014 five-year review, in particular that there approximately 5 times more Warbler breeding habitat than estimated at the time of the emergency listing in 1990, and approximately 19 times more Warblers than assumed at the time of the emergency listing in 1990. *See* Texas A&M Study, Ex. 7 at 4, 8. The Texas A&M Study concluded that the listing of the Warbler was “based upon a fundamental misunderstanding of the existing abundance and population structure” of the Warbler. *Id.* at 2.

NEPA Compliance

62. The Service has acknowledged that it has not complied with the requirements of NEPA in connection with any of its actions regarding the Warbler. 55 Fed. Reg. 53153 at 53159.

Harm to Plaintiff

63. The presence of Warblers on certain TXGLO property significantly impacts the market value of such property. For example, on a 2,316.45-acre property located in Bexar and Kendall counties (“Rancho Sierra property”), approximately 84.5% of the property contains Warbler habitat. *Rancho Sierra Property Information*, Ex. 5 at 25.

64. Clearing or development on the Rancho Sierra property would require a lengthy and costly mitigation process, and experts have estimated that the presence of Warbler breeding habitat diminishes the value of the property by approximately 35%. *Id.* at 25; *Rancho Sierra “As Is” Valuation*, Ex. 6 at 75.

65. The reduction in property value caused by the presence of Warbler habitat translates to less money available for fulfilling TXGLO’s mission to maximize revenues from Texas public school lands for the benefit of Texas schoolchildren.

66. The presences of Warblers on TXGLO property subjects certain TXGLO’s actions on its property to the time consuming and costly requirements of Sections 7 and 9 of the ESA.

INJUNCTIVE RELIEF ALLEGATIONS

67. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 66 as though fully set forth herein.

68. If an injunction does not issue enjoining Defendants from maintaining the Warbler’s status as an endangered species under the ESA, Plaintiff will be irreparably harmed.

69. Plaintiff has no plain, speedy, and adequate remedy at law.

70. If not enjoined by this Court, Defendants will continue to enforce the Warbler’s status as an endangered species under the ESA in derogation of Plaintiff’s rights.

71. Accordingly, injunctive relief is appropriate.

DECLARATORY RELIEF ALLEGATIONS

72. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 71 as though fully set forth herein.

73. An actual and substantial controversy exists between Plaintiff and Defendants as to their legal rights and duties with respect to Defendants' obligations to comply with the ESA, NEPA, and the APA in the listing, refusal to delist, and failure to designate critical habitat for the Warbler.

74. This case is presently justiciable because Defendants' failure to comply with these laws is the direct result of final agency action that has caused and will continue to cause immediate and concrete injury to Plaintiff. Plaintiff has a vital interest in knowing whether the Warbler's continued listing as an endangered species under the ESA, from which flow statutory obligations and penalties affecting the Plaintiff, is statutorily valid.

75. Declaratory relief is therefore appropriate to resolve this controversy.

CLAIMS FOR RELIEF

First Claim for Relief

Failure to Designate Critical Habitat for the Warbler for Over 25 Years since Listing the Species as Endangered is Inconsistent with the Continued Endangered Status of the Species.

(Violation of 16 U.S.C. §1533(b)(2), 50 C.F.R. §424.12, and 50 C.F.R. §424.19; Alternatively, 5 U.S.C. §706)

76. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 75 as though fully set forth herein.

77. In the final rule listing the Warbler as endangered, Defendants failed to concurrently designate critical habitat for the Warbler, in violation of 16 U.S.C. §1533(b)(2). This violation has continued for over 25 years.

78. Failure to designate critical habitat for over 25 years is inconsistent with the continued listing of the Warbler as an endangered species. By failing to designate critical habitat for the Warbler at the time of the final rulemaking and for more than twenty-five years thereafter, Defendants have violated not only the ESA's statutory requirement but also the implementing regulations set forth in 50 C.F.R. §424.12 and 50 C.F.R. §424.19.

79. Alternatively, Defendants have violated the APA by agency action which is arbitrary and capricious in listing the Warbler as endangered and maintaining its endangered status for over twenty-five years without designating critical habitat. 5 U.S.C. §706(2)(A). Defendants' action is reviewable under 5 U.S.C. §704.

80. By these acts or omissions Defendants violated 16 U.S.C. §1533(b)(2) and 50 C.F.R. §§424.12 and 424.19. The listing of the Warbler as an endangered species under the ESA is therefore unlawful and invalid.

Second Claim for Relief

Failure to Delist the Warbler Based on the Scientific Data Presented in Petition to Delist, While Continuing to Refuse to Designate Critical Habitat

**(Violation of 16 U.S.C. §1533(b)(1)(A), 50 C.F.R. §424.11(d),
and 50 C.F.R. §424.14(h)(1); Alternatively, 5 U.S.C. §706)**

81. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 80 as though fully set forth herein.

82. In their 90-Day Finding, Defendants failed to take into account the best scientific data available, in violation of 16 U.S.C. §1533(b)(1)(A). By not considering the new scientific data presented in the Petition to Delist and accompanying Texas A&M Study, Defendants have violated not only the statutory requirement but also the implementing regulations set forth in 50 C.F.R. §424.11(d).

83. Failing to delist the Warbler in Response to the Petition to Delist while continuing to refuse to designate critical habitat without sufficient justification is a violation of 16 U.S.C. §1533(b)(1)(A), 50 C.F.R. §424.11(d). The Service's negative 90-Day Finding on the Petition to Delist is therefore invalid.

84. Alternatively, Defendants have violated the APA by agency action that is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law in failing to designate critical habitat in light of its denial of the Delisting Petition. 5 U.S.C. §706(2)(A).

Third Claim for Relief

Failure to Comply with NEPA

(Violation of 42 U.S.C. §4332(C) and 5 U.S.C. §706(2)(A))

85. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1 through 84 as though fully set forth herein.

86. In its final rule listing the Warbler as endangered under the ESA, the government categorically stated that NEPA does not apply to regulations adopted pursuant to section 4(a) of the ESA, and therefore prepared neither an Environmental Assessment nor an Environmental Impact Statement. 55 Fed. Reg. 53159. Neither the ESA nor any other statute exempts listing decisions from NEPA compliance, and therefore Defendants' failure is a violation of the requirements of NEPA.

87. Defendants' failure to comply with NEPA constitutes agency action that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of 5 U.S.C. §706(2)(B).

PRAYER FOR RELIEF

THEREFORE, Plaintiff prays as to the First Claim for Relief:

That this Court declare the final rule listing the Warbler as an endangered species under the ESA violated the Defendants' nondiscretionary duty under Section 4(a)(3)(A) of the ESA, 16 U.S.C. §1533(a)(3)(A), as well as 50 C.F.R. §424.12 and 50 C.F.R. §424.19, because Defendants failed to designate critical habitat concurrently with listing the Warbler as endangered and for more than twenty-five years afterward, through the date of this Complaint, while maintaining the Warbler's endangered status or, alternatively, that the final rule is unlawful under 5 U.S.C. §706 because Defendants' failure to designate critical habitat while maintaining the endangered status of the Warbler for over 25 years was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

As to the Second Claim for Relief:

That this Court declare the 90-Day Finding on the Petition to Delist violated 16 U.S.C. §1533(b)(1)(A), as well as 50 C.F.R. §424.11(d) and 50 C.F.R. §424.14(h)(1), by the Service's failing to consider the best scientific data available in deciding not to delist the Warbler, and in light of its continuing unjustifiable refusal to designate critical habitat for the Warbler, and is therefore unlawful, or alternatively, that Defendants' failure to designate critical habitat in light of their denial of the Delisting Petition is unlawful because it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. §706(2)(A).

As to the Third Claim for Relief:

That this Court declare the final rule listing the Warbler as an endangered species under the ESA is unlawful, and that the refusal to delist the Warbler in response to the Petition to Delist is unlawful, under 5 U.S.C. §706, because Defendants failed to comply with NEPA.

As to all Claims for Relief:

That this Court:

- (a) issue a judgment and order enjoining Defendants from enforcing or otherwise acting pursuant to the final rule listing the Warbler as endangered under the ESA;
- (b) issue a declaration that the continued listing of the Warbler is invalid;
- (b) award Plaintiff's attorneys fees and costs to the extent permitted by law; and
- (c) grant such other relief as the Court shall deem just and proper.

Respectfully submitted,



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TEXAS PUBLIC POLICY FOUNDATION
Center for the American Future
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Attorneys for Plaintiff
General Land Office of the State of Texas

To: Johnson, Virginia[virginia_johnson@ios.doi.gov];
casey_hammond@ios.doi.gov[casey_hammond@ios.doi.gov]; Domenech,
Douglas[douglas_domenech@ios.doi.gov]
From: Robert Henneke
Sent: 2017-05-22T11:17:11-04:00
Importance: Normal
Subject: George Will's column about the BCH lawsuit
Received: 2017-05-22T11:16:33-04:00

I wanted to make sure that you saw George Will's column in yesterday's Washington Post discussing the commerce clause constitutional issue in the bone-cave harvestman lawsuit

https://www.washingtonpost.com/opinions/federal-power-creeps-its-way-toward-controlling---spiders/2017/05/19/1e7189bc-3caf-11e7-a058-ddbb23c75d82_story.html?utm_term=.e82705c5e369

Federal power creeps its way toward controlling . . . spiders?

Law books and a gavel. (iStock/iStock)

By George F. Will Opinion writer May 19

A blind spider creeping through America's judicial thicket might be heading to the Supreme Court, which will have to decide if the contentment or even the survival of the Bone Cave Harvestman spider species, which lives only in two central Texas counties, is any of the federal government's business. If it is, what isn't?

The U.S. Fish and Wildlife Service (USFWS), which administers the Endangered Species Act, is blind to the limits of its imperium, which it thinks encompasses telling John Yearwood what he can and cannot do on the ranch that has been in his family since 1871. To stymie the USFWS, Yearwood must surmount, among other things, a precedent involving Roscoe Filburn, the Ohio farmer whose 1942 loss in the Supreme Court mocked the doctrine that the federal

government is one of limited, because enumerated, powers.

Filburn was minding what he thought was his business when Washington taught him that the Constitution's commerce clause ("Congress shall have power to . . . regulate commerce . . . among the several states") means that almost everything is the federal government's business. To stabilize prices, the government set production quotas not only for wheat sold into interstate commerce but for wheat consumed on the farm for animal feed. Filburn expressed his dissent by producing 269 bushels in excess of his quota and refusing to pay the fine.

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His insubordination reached the Supreme Court, which by then was thoroughly deferential to the New Deal's capacious theory of federal power. The court held that Congress could regulate even Filburn's wheat that never reached interstate commerce, because that wheat "supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce."

Seventy-five years on, recent decisions have brought commerce clause jurisprudence closer to the Founding Fathers' intention as presented by Chief Justice John Marshall in *McCulloch v. Maryland* (1819). The clause requires a "plain" connection, not merely attenuated chains of inferences, between a congressional act and an enumerated power. Furthermore, recent decisions require not only that a federal statute pertain to "activities having a substantial relation to interstate commerce," but also that the statute pass muster under the necessary and proper clause: Congress may "make all laws . . . necessary and proper" to executing enumerated

powers. A statute, Justice Clarence Thomas has said, must be “appropriate,” bearing an “obvious, simple, and direct relation” to an enumerated power.

A lower court has sided with the USFWS against Yearwood, dogmatically postulating that all species are “interdependent.” Therefore, even the tiniest bit of the ecosystem is presumptively implicated in potentially substantial effects on interstate commerce.

So, Yearwood, who hitherto made his property available cost-free to 4-H, church and military groups for camping, horseback riding and other activities, has stopped this, and even ceased clearing brush to reduce the risk of snakes and fires, lest he be subject to federal prosecution for disturbing, harming or endangering the spiders. Indeed, such is the federal government’s unsleeping solicitude for the spiders, it says they must be protected from other bugs, such as fire ants. Reverence for nature evidently requires preventing natural competitions.

Judge Alex Kozinski of the U.S. Court of Appeals for the 9th Circuit has written that modern commerce clause decisions make one wonder why it is not called the “Hey, you-can-do-whatever-you-feel-like clause.” So far, the spider story — the application of the Endangered Species Act to an entirely intrastate species that is neither bought nor sold nor traded in interstate commerce — demonstrates that federal power, like kudzu, will expand everywhere and into everything until it is stopped.

The Supreme Court can stop it if the spider case gets there. The court can apply its 2005 ruling that congressional regulation of intrastate, noncommercial activity is proper only when the activity is an “essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.”

Furthermore, in 2012, while Chief Justice John G. Roberts Jr. was irritating conservatives as he saved the Affordable Care Act by creatively construing some of its provisions, he simultaneously held that even a necessary exercise of power under the commerce clause is not proper if it “would work a substantial expansion of federal authority.” The blind spider might make other courts, and the rest of the government, see the Supreme Court’s 1995 ruling that the government may not “convert congressional Commerce Clause authority to a general police power of the sort held only by the states.”

Read more from George F. Will’s archive or follow him on Facebook.

To: Daniel Jorjani[daniel_jorjani@ios.doi.gov]
From: Domenech, Douglas
Sent: 2017-07-14T09:48:03-04:00
Importance: Normal
Subject: Fwd: Introduction to Kaleb Bennett
Received: 2017-07-14T09:48:30-04:00

I think it would be better for you and perhaps Jim or Todd to meet with these people. I am happy to attend but, as far as I know, we the Department is in litigation over this issue with my former employer, TPPF, as the plaintiff. The meeting would be with the State of Texas. If you agree I will direct them to you.

Doug Domenech
Senior Advisor
US Department of the Interior

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

----- Forwarded message -----

From: Kaleb Bennett <Kaleb.Bennett@glo.texas.gov>
Date: Wed, Jul 12, 2017 at 3:23 PM
Subject: RE: Introduction to Kaleb Bennett
To: Robert Henneke <rhenneke@texaspolicy.com>, "Domenech, Douglas" <douglas_domenech@ios.doi.gov>

Thanks for the introduction, Rob. I certainly appreciate it.

Doug,

As you may know, my office is involved with the Red River issue between the BLM and the Texas General Land Office.

I was hoping you have some availability either the afternoon of July 19 or the morning/early afternoon of July 20 for a meeting to discuss the Red River.

Attending the meeting would be me and GLO special counsel, Hector Valle.

Thank you for your assistance and I look forward to hearing from you.

Take care,

KB

Kaleb Bennett

Deputy Director Federal Legislative Affairs

Commissioner George P. Bush

Texas General Land Office

512-463-5363 (direct)

405-474-3581 (cell)

From: Robert Henneke [mailto:rhenneke@texaspolicy.com]

Sent: Wednesday, July 12, 2017 1:45 PM

To: Domenech, Douglas <douglas_domenech@ios.doi.gov>

Cc: Kaleb Bennett <Kaleb.Bennett@GLO.TEXAS.GOV>

Subject: Introduction to Kaleb Bennett

Doug,

Via this email, I'd like to introduce you to Kaleb Bennett. Kaleb serves as the Deputy Director for Federal Legislative Affairs for the Texas General Land Office and asked to be connected regarding his upcoming trip to WDC.

Thanks,

Rob

To: Daniel Jorjani[daniel_jorjani@ios.doi.gov]; Haugrud, Kevin[jack.haugrud@sol.doi.gov]
From: Domenech, Douglas
Sent: 2017-05-22T13:30:17-04:00
Importance: Normal
Subject: Fwd: George Will's column about the BCH lawsuit
Received: 2017-05-22T13:30:44-04:00

Doug Domenech
Senior Advisor
US Department of the Interior

----- Forwarded message -----

From: **Robert Henneke** <rhenneke@texaspolicy.com>

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https://www.washingtonpost.com/opinions/federal-power-creeps-its-way-toward-controlling---spiders/2017/05/19/1e7189bc-3caf-11e7-a058-ddbb23c75d82_story.html?utm_term=.e82705c5e369

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By George F. Will Opinion writer May 19

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To: daniel_jorjani@ios.doi.gov[daniel_jorjani@ios.doi.gov]
Cc: Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Robert Henneke
Sent: 2017-06-30T13:46:09-04:00
Importance: Normal
Subject: FW: Decision Letter for FOIA Request SOL-2017-00157
Received: 2017-06-30T14:15:44-04:00
[Decision Letter SOL-2017-00157 \(Henneke\).docx](#)

Dan,

Doug suggested that I reach out to you on this. Basically, I'm looking for a list of the lawsuits (case name, cause#, court) that have been filed against DOI, its subagencies, or officials since January 20, 2017. The way my FOIA request is written, it would also include copies of the actual pleadings which would have the same information (which I assume DOI has), but I'm not looking for voluminous documents – only the style information about these recently filed lawsuits. EPA just sent me a list in response to the same request.

I wanted to ask to your help in sorting out the apparent miscommunication. My intent was not to make a cumbersome FOIA request, but only to seek some basic information. Please let me know if you'd have 10 minutes next week to discuss.

Thanks,

Rob Henneke

+++++

Robert Henneke

General Counsel &
Director, Center for the American Future
Texas Public Policy Foundation
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From: <angela.moore@sol.doi.gov> on behalf of "Foia, SOL" <sol.foia@sol.doi.gov>
Date: Friday, June 30, 2017 at 11:43 AM
To: Robert Henneke <rhenneke@texaspolicy.com>
Cc: Lance Purvis <lance.purvis@sol.doi.gov>
Subject: Decision Letter for FOIA Request SOL-2017-00157

Good morning Mr. Henneke,

Attached is the Solicitor's decision letter for your FOIA request received on May 8, 2017.

Sincerely,

Lance Purvis
Office of the Solicitor, FOIA Officer



United States Department of the Interior

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20240

IN REPLY REFER TO:
SOL-2017-00157

June 30, 2017

Via Email: rhenneke@texaspolicy.com

Robert Henneke
Texas Public Policy Foundation
901 Congress Avenue
Austin, TX 78701

Dear Mr. Henneke,

On May 8, 2017, the U.S. Department of the Interior, Office of the Solicitor received your Freedom of Information Act (FOIA) request. In your request, you specifically ask for:

“...copies of all documents within the possession or control of the Department of Interior (“DOI”) which lists every lawsuit filed against the DOI, agencies within DOI, or officials within DOI and its subagencies since January 20, 2017, including identification of the style, cause number, and court for each lawsuit. In the alternative, documents identifying the style, cause number, and court of all lawsuits filed against DOI agencies within DOI, or officials within DOI since January 20, 2017.”

In response to your letter, the Office of the Solicitor searched its records and found no documents responsive to your request.

This concludes the Office of the Solicitor’s response to your request. The fee incurred in responding to your request is less than \$50 and is not being charged in accordance with 43 CFR 2.16(b)(2).

Sincerely,

Lance Purvis
Office of the Solicitor FOIA Officer

To: Robert Henneke[rhenneke@texaspolicy.com]; Katharine Macgregor[kate_macgregor@ios.doi.gov]
From: Domenech, Douglas
Sent: 2017-04-07T08:46:00-04:00
Importance: Normal
Subject: Emails
Received: 2017-04-07T08:46:27-04:00

Great seeing you.

You met with:

Jim Cason, Acting Deputy Secretary. james_cason@ios.doi.gov
Casey Hammond, Special Assistant, FWS: casey_hammond@ios.doi.gov
Virginia Johnson, Special Assistant, ASFWP: virginia_johnson@ios.doi.gov
Kate McGregor, Deputy Assistant Secretary Land and Minerals: kate_macgregor@ios.doi.gov

Doug Domenech
Senior Advisor
US Department of the Interior

To: casey_hammond@ios.doi.gov[casey_hammond@ios.doi.gov];
virginia_johnson@ios.doi.gov[virginia_johnson@ios.doi.gov]
Cc: Domenech, Douglas[douglas_domenech@ios.doi.gov]
From: Robert Henneke
Sent: 2017-05-08T18:17:36-04:00
Importance: Normal
Subject: bone-cave harvestman lawsuit
Received: 2017-05-08T18:16:10-04:00

Dear Virginia & Casey,

Thank you again for your time in meeting with me last month. I wanted to make sure that you saw that the Service did file with the Federal Register the following affirming its prior negative 90-day finding. <https://www.federalregister.gov/documents/2017/05/04/2017-09010/endangered-and-threatened-wildlife-and-plants-90-day-finding-on-a-petition-to-remove-the-bone-cave>. As such, the basis for the court imposed stay has ended. The Parties are now currently negotiating a new briefing schedule and scheduling order to get this case back on track.

Sincerely,

Rob Henneke

+++++

Robert Henneke

General Counsel &
Director, Center for the American Future
Texas Public Policy Foundation
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DEPARTMENT OF THE INTERIOR DAILY UPDATE FOR CABINET AFFAIRS – 11/13/17

Lori Mashburn, White House Liaison
Natalie Davis, Special Assistant to the Secretary

STATUS OF THE SECRETARY

THIS WEEK: The Secretary is in DC.

- 11/13 – Call with New Mexico Governor Susana Martinez
 - Lunch with Joshua Tree Superintendent
- 11/14 – Meeting with Majority Leader Kevin McCarthy, Sen. Barrasso, Rep. Cheney, and Rep. Cook
 - Meeting with Senator Durbin
- 11/15 – Meeting with The Nature Conservancy
 - Meeting with National Park Service Regional Directors Meeting
 - TENT. Gershwin Prize Event
- 11/16 – OTR Breakfast Roundtable with Senators
 - TENT. Museum Dedication Gala
- 11/17 – Internal Meetings

STATUS OF THE DEPUTY SECRETARY

TODAY: Internal Meeting in DC.

WH COMMS REPORT (submitted Friday, 11/10)

Press Inquiries:

- Small inquiries and logistical inquiries.
- **RV News:** (David Rosansky)—**REQUEST**-- I see a fine has been issued to Hamilton County Indiana in the amount of \$6,533 for two violations of NAGPRA. Can you tell me about that? I had thought the fine might be much higher based on the long term the parks department was not in compliance. Also, I believe the tribes submitted \$20,000 in expenses--**RESPONSE**— The Department of the Interior generally does not comment on pending civil penalty enforcement actions to avoid jeopardizing on-going investigations.
- **CQ Roll Call:** (Jackie Toth)—**REQUEST**-- Can we get comment on Sen. Durbin's hold on the four Interior nominees on the Senate calendar?—**RESPONSE**-- It's a false argument. Nominees like Brenda Burman have been waiting months for a vote. An October 23rd scheduling request doesn't explain the other 116 days.

Top Stories

- **KTUU Alaska:** [Veterans Day activities begins with reading of Vietnam Memorial Wall names](#)
- **E&E News:** [Durbin puts hold on nominees](#)
- **Philadelphia Inquirer- OPINION:** [Recognizing the Pa. veterans who just donated \\$40K to Vietnam War Memorial | Secretary Ryan Zinke](#)
- **Durango Herald- OPINION:** [Woolston: America's security and economy depend on ANWR](#)
- **New York Times:** [Lines Are Drawn Over Design for a National World War I Memorial](#)

Top Issues and Accomplishments

- Interior continues to support all Hurricane Harvey, Hurricane Irma, Hurricane Maria, and Hurricane Nate efforts. All bureaus are executing their emergency plans and assisting in Hurricane relief.
- Tonight, Secretary Zinke has a Fox News Interview with Shannon Bream. The hit is at 11 pm.

- Today, DOI made a personnel announcement regarding the four veterans Secretary Zinke has recently hired.
- Friday, Secretary Zinke will visit Manassas Battlefield to honor veterans and tour the battlefield.
- Saturday, Secretary Zinke will participate in five Veterans Day events and celebrations.
 - **6:30 am EST:**
Secretary Zinke will join veterans in washing the wall at the Vietnam Veterans Memorial.
 - **8:45 am EST:**
Secretary Zinke participates in a Veterans Day observance at the World War II Memorial.
 - **10:30 am EST:**
Secretary Zinke will participate in the 64th annual Veterans Day National Ceremony at Arlington National Cemetery.
 - **1:00 pm EST:**
Secretary Zinke will address the Vietnam Veterans Memorial Fund at the Vietnam Veterans Memorial.
 - **3:30 pm EST:**
Secretary Zinke will give remarks at the Korean War Veterans Memorial Veterans Day Observance.

AGENCY MEDIA

WEEK AHEAD November 8 thru November 16, 2017 (submitted November 8)

Announcements/Releases/Events

U.S. Department of the Interior

Secretarial-level Announcements/Events/Interviews

This week the Secretary is in Washington, D.C.

- **November 14:** the "Stream Protection Rule" (related to OSMRE) will hit the Federal Register. Communications materials are forthcoming.
- **November TBD:** Major announcement regarding Arlington Memorial Bridge. Pending WH review. December 4: Proclamation signing in Utah regarding the Antiquities Act. Communications materials are forthcoming.
- **November/December TBD:** USGS will release a report on critical minerals, followed by an EO and SO signing. Communications materials are forthcoming.

The Secretary stands ready to support the WH on media opportunities to push the President's Tax Reform Agenda. WH has dates/times of availability.

National Park Service

- **November TBD:** Local NPS Release: NPS will announce plans to re-establish operations at Virgin Islands National Park.
- **November 14:** Local NPS Release: Glacier National Park will notify the public of the availability of Glacier National Park's Lake McDonald Properties Management Plan Environmental Assessment (EA). The EA will be available for a 30-day public review and comment period. Following the public review and comment period, the park will prepare a formal decision document. The EA analyzes alternatives to manage NPS-owned properties surrounding Lake McDonald, which includes buildings listed on the National Register of Historic Places.
- **November 14:** National Joint Release: The U.S. Mint and the NPS will unveil the Indiana quarter at George Rogers Clark NHP. This is the last America the Beautiful Quarter® release scheduled for 2017, and the 40th of the 56-quarter series from the U.S. Mint recognizing national parks or historic sites around the country. Deputy Regional Director Patricia Trap will speak at the event.

- **November 15:** Local NPS Release: Death Valley National Park anticipates the simultaneous release of two Environmental Assessments for a 30-day public review. Public meetings will be held during the public review periods. Both projects address damage that resulted from a major rainstorm and extensive flash flood in 2015.
- **November TBD:** Local NPS Release: NPS NCR will issue news release on upcoming deer management and reduction at three western Maryland parks. All three parks did the same last year with minimal controversy.

U.S. Fish and Wildlife Service

- **November 13 (tent.):** National FWS Release: FWS will issue a release on the opening of the public comment for both the Candidate Conservation Agreements with Assurances (CCAA) policy and the corresponding regulations. These notices will solicit public comments on the 2016 revised policy and regulations to determine if there are additional revisions, particularly to the CCAA standard, that will make the policy and regulations easier to implement for those entities choosing to participate in a CCAA.
- **November 13:** Local FWS Release: FWS will announce the reopening of comment period on the proposed rule regarding the threatened species status for San Fernando Valley Spineflower.
- **November TBD:** FWS News Bulletin: FWS will issue a news bulletin regarding a NEPA Environmental Assessment related to lethal take permits for cormorants (a type of bird which is considered an invasive species) for aquaculture facilities.

Bureau of Land Management

- **November 14-15:** BLM will hold the final scoping meetings for the Notice of Intent to amend Greater sage-grouse land use plans in Vernal and Cedar City, UT, respectively.
- **November 16:** Acting ASLM Kate MacGregor will deliver the keynote address at the Grand Junction Petroleum and Mining Club's monthly meeting in Grand Junction, Colo. Titled DOIs Role in Energy Dominance, her remarks will focus on the Administration's energy-related priorities, including efforts to streamline the environmental review and permitting processes, reduce regulatory burdens on energy development, and boost rural economies through job creation in the energy industry.
- **November 16:** BLM-AK Authorized Officer Erika Reed and Deputy Authorized Officer Dave Mushovic will attend a monthly Senior Leadership meeting for the Trans-Alaska Pipeline System, hosted by Alyeska Pipeline Service Company (the corporation that manages the system).
- **November TBD:** National BLM Release: BLM will issue a release announcing that Sabinoso Wilderness is now open to the public.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision about whether to grant a royalty rate reduction for the West Elk Mine. The BLM proposes to approve Mountain Coal Company, LLC's application for a royalty rate reduction from 8 percent to 5 percent for 10.3 million tons of coal in the West Elk Mine in southwest Colorado's North Fork Valley.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision whether to modify GCC Energy's King II Mine in Montezuma County in southwest CO by 951 acres to allow GCC to access an estimated 4.66 million tons of recoverable Federal coal reserves for an additional 6.5 years of mining.

U.S. Geological Survey

- **November 13 (tent.):** The USGS will release the first-ever map of croplands worldwide using 30-m resolution, which is the highest resolution yet. This is a collaborative effort among international agencies. The map will clearly show individual farm fields and cover 1.874 billion hectares of croplands. This is a one-of-a-kind dataset primarily using Landsat satellite data. The map is part of

the Global Food Security-Support Analysis Data @ 30-m (GFSAD30) Project. Partners and stakeholders include US federal agencies (NASA, USDA, EPA), Google, universities, and international research groups.

November 13: National USGS Release: USGS will announce the estimated amount of uranium ore in portions of Texas, New Mexico, and Oklahoma. The discovery of calcrete deposits by industry led USGS to conduct an assessment. In the process of the assessment, a new species of uranium mineral was discovered by USGS.

- **November 15:** National USGS Release: USGS will issue a release announcing the Pecora Awards for Excellence in Earth Observation.
- **November TBD:** Local USGS Release: USGS will issue a release regarding a new USGS study that tracks millions of tons of rocks, gravel and silt carried by the Sauk River and its tributaries to the Skagit River.

Bureau of Reclamation

- **November TBD:** National Reclamation Release: Reclamation will release two funding opportunity announcements under the Drought Response Program for drought resiliency projects and drought contingency planning. The Drought Response Program supports a proactive approach to drought. It will provide assistance to water users for drought contingency planning and to take actions that will build long-term resiliency to drought.

Bureau of Ocean Energy Management:

- **November TBD:** BOEM Note to Stakeholders: BOEM issue a note to stakeholders regarding Q3 FY17 study reports posting to ESPIS.
- **November TBD:** GOMR Sale 249 closeout NTS.
- **November TBD:** BOEM will announce a three-week extension of the Liberty EIS comment period.

Office of the Assistant Secretary-Indian Affairs (including Bureau of Indian Affairs)

- **November 14:** Acting Assistant Secretary-Indian Affairs Tahsuda and Acting Special Trustee Gidner will appear on the Native America Calling radio show to talk about the final deadline the US District Court set for November 27, 2017 for any Class Member or the heir of a Class Member to provide documentation so that payment can be made.
- **November 15:** "Rock Your Mocs (Moccasins) Day!" Acting Assistant Secretary-Indian Affairs Tahsuda will participate in the annual Native Youth inspired day by gathering with employee to "Rock Your Mocs!" This will be social media driven with our leadership, staff, and BIE Schools.

CONGRESSIONAL UPDATE

UPCOMING HNRC HEARING: The House Natural Resources Subcommittee on Indian Affairs is holding a legislating hearing on the following bills: H.R. 212 (Young of AK), expediting Congressional review of tribal funding agreement under ISDEAA; H.R. 2320 (Larsen), land into trust for Samish Indian Nation; and H.R. 3225 (DeFazio), allow certain OR tribes to lease or transfer land. Witness is pending.

Timing: Wednesday, November 15

Contact: Amanda Kaster, Policy Adviser, Congressional Affairs

PENDING COLORADO ANNOUNCEMENT: Sec. Zinke and Dep. Sec. Bernhardt have been working with Sen. Gardner and Rep. Tipton on a resolution to a long-standing issue in Western Colorado regarding the release of funds related to an old mine. This money would go to the state and counties. The previous administration did nothing on this issue for the last eight years. DOI is working with the delegation on releasing these funds. It will be big news for the Senator, Congressman and rural Colorado.

Timing: TBD

Contact: Micah Chambers, Deputy Director, Congressional Affairs

POLITICAL APPOINTEE UPDATE

DOI politicals on board 65

3 PAS confirmed as of 9/18.

6 nominated awaiting confirmation:

- Pending Senate floor vote: Susan Combs, Assistant Secretary Policy Management and Budget.
- Pending Senate floor vote: Brenda Berman, Commissioner, Bureau of Reclamation.
- Pending Senate floor vote: Joe Balash, Assistant Secretary, Land and Minerals
- Pending Senate floor vote: Ryan Douglas Nelson, Solicitor
- Pending Hearing: Tara Sweeney, Assistant Secretary for Indian Affairs
- Pending Hearing: Steve Gardner, Director, Office of Surface Mining and Reclamation
- **TO BE ANNOUNCED TODAY:** Tim Petty, Assistant Secretary for Water and Science

Overall:

- Schedule C: 36 of 68 onboard; 2 starting; 6 in process
- NC-SES: 26 of 44 onboard; 3 starting; 1 in process
- PAS: 3 Confirmed; 5 Announced; 14 of 17 Submitted to PPO

SECRETARY SPEAKING INVITATIONS

Accepted:

11/21 – US Marine Corps Unveiling of the Iraq and Afghanistan engraving at Iwo Jima

Open (date TBC)- Americans for Tax Reform (DC)

Open (date TBC)- Detroit Economic Club

Event Postponed by organizers due to fire - 10/21 – DEPA BOD Meeting (CA)

Outstanding Invitations in Process:

1/11/18 – EEI CEO and Board Conference (Phoenix, AZ)

Declining

11/13 Montana Farm Bureau Federation Annual Meeting (Billings, MT)

11/14 – George Rogers Clark National Historical Park Quarter Launch (Vincennes, Indiana)

11/15 Motorcycle Industry Council Symposium (Carson, CA)

11/29 Association of California Water Agencies 2017 Fall Conference and Exhibition (Anaheim, CA)

12/1-2 – Western Governors Association Annual Meeting (Phoenix, AZ)

12/5-7 America Outdoors Association's 29th Annual Marketing and Management Conference for Outfitters and Adventure Resorts (Reno, NV)

12/6 American Exploration and Mining Association Annual Meeting (Reno, NV)

12/8 - Valley Industry and Commerce Association Annual Meeting (Los Angeles, CA)

12/11 – Veterans Day Commemoration (Prussia, PA)

12/14 – Leadership Missoula (Missoula, Montana)

12/8 – DOI Toastmasters event (Washington, DC)

12/9 – Western Caucus Foundation Winter Policy Meeting (Las Vegas, NV)

2/9-10 Associated General Contractors Western Chapter Annual Meeting (La Jolla, CA)

2/23/18 – West Slope Colorado Oil and Gas Association Annual Meeting (Grand Junction, CO)

EMERGENCY MANAGEMENT

Interagency Hurricane response and recovery efforts:

USGS continues to provide support to FEMA by identifying, flagging, and surveying high water marks for communities impacted by riverine or coastal flooding in Puerto Rico. While this mission is expected to continue through December 15, field work will be completed this week and the team will begin to process and analyze the data they have gathered. A team of five scientists from the USGS Landslides Hazards Program (LHP) continues to conduct surveys documenting landslide occurrences. To date, over 50,000 landslides have been documented across Puerto Rico. Landslides have impacted infrastructure and property, and isolated several mountain communities.

DOI has 10 (-17) employees from bureaus and offices supporting the FEMA Surge Capacity Force. The group is comprised of volunteers that are located in Puerto Rico, the U.S. Virgin Islands, Nevada, and Florida. These personnel are expected to demobilize by November 28 and FEMA has concluded that additional DOI personnel are not needed in support of this mission. DOI also has 31 (+7) employees supporting, or are scheduled to provide support to, the Small Business Administration (SBA). The group is comprised of volunteers working in New York, Texas, California, Virginia, Florida, and Washington, D.C.

Internal bureau and office-specific Hurricane response and recovery activities:

NPS reports that recent weather conditions and slowly subsiding water levels have improved conditions in the Big Cypress National Preserve, where staff has been working to restore facilities, infrastructure, and access to the public after Hurricane Irma.

USFWS has initiated a phased re-opening of the Florida Keys NWR Complex after closures were required due to impacts from Hurricane Irma. Visitor access was restored to the Crocodile Lake NWR, the National Key Deer NWR, the Key West NWR, and the Great White Heron NWR earlier this month.

Department of Homeland Security Reporting:

In Puerto Rico, power has been restored to approximately 43 (+7)-percent of customers and the expectation is that 95-percent of Puerto Rico will be restored by December 15. Potable water has been restored to more than 85 (+3)-percent of clients served by the Puerto Rico Aqueduct and Sewer Authority. The Guajataca Dam drawdown is now complete as water levels have dropped to 14 feet below the spillway. While a Flash Flood Warning remains in effect, the Puerto Rico Emergency Management Agency is working with the U.S. Army Corps of Engineers and the National Weather Service to discontinue the warning as early as today.

In the U.S. Virgin Islands, the Virgin Islands Water and Power Authority estimates 90-percent power restoration by late December. Over the last week, grid power service has increased to 38 (+17)-percent of the population for St. Thomas, 12 (+7)-percent for St. Croix, and 30 (+26)-percent for St. John. Telecommunication officials report 62 (+10)-percent of cellular sites are operational and an estimated 93 (+5)-percent of the population lives in areas where wireless voice and text service has been restored.

OUTSIDE MEDIA OF INTEREST (new)**Vice President Pence Honors Veterans By Cleaning Vietnam Memorial.**

USA Today (11/11, Groppe) reported Vice President Mike Pence and Interior Secretary Ryan Zinke helped clean names etched onto the Vietnam Veterans Memorial Saturday. After arriving at the memorial with his wife, Pence, wearing blue jeans and yellow gloves, "carried an orange cleaning bucket with the message "Let's Do This" to an area close to the center of the wall." USA Today quotes Zinke

saying to the vice president, “You scrub and I’ll dry.” [ABC News](#) (11/11) reported Pence “shook hands and posed for photos with the volunteers in subfreezing temperatures just after dawn.” Pence and Zinke were also joined by James Pierce, “a National Park Service ranger who lost a leg while serving with the North Carolina Army National Guard in Afghanistan.” The event was sponsored by the New Day USA, a mortgage company specializing in loans to veterans.

Zinke Says Democrats Holding Interior Nominees ‘Hostage.’

The [AP](#) (11/11, Daly) reports Interior Secretary Zinke on Thursday sent a “sharply worded letter” to Senate Minority Whip Dick Durbin accusing Senate Democrats of “holding the department’s nominees ‘hostage’ to a political agenda that includes opposition to his review of presidentially designated monuments.” Zinke asserted the nominees “have nothing to do with this monument review, yet they have been forced to sit on the sidelines [for months]. As a former Navy SEAL, this is not the type of hostage situation I am accustomed to.” According to the AP, “Durbin has placed holds on four Interior nominees: Susan Combs, nominated as assistant secretary for policy, management and budget; Joseph Balash, assistant secretary for land and minerals management; Ryan Nelson, solicitor; and Brenda Burman, commissioner of the Bureau of Reclamation, which oversees dams and water projects in 17 Western states.”

Fox News Interviews Zinke About Energy Production On Federal Lands, National Park Fee Hikes.

Interior Secretary Ryan Zinke was interviewed Thursday evening on [Fox News @ Night](#) (11/9) about criticism he has received from environmentalists. In response to concerns about increasing energy production on Federal lands, Zinke said, “If you want to make our country not dependent on foreign oil. I am a former seal. I don’t want to see your kids, my kids go to foreign shores and fight for a commodity we have here. We are going to do it right. We are not going to sell or transfer public land, but if you believe in the concept that the best science, best practices, greater good in the longest term, then you’re with the secretary of the interior. But if you believe public land is exclusive, only for the elite few that want to look at it but i’m a public access person. I think the public land should be available to america and the public.” Zinke also called criticism of National Park fee increases “baloney,” adding, “The greatest bargain in America is \$80 for a year-long pass of our public lands. I face an \$11.5 billion backlog of our public lands and parks. Our parks are being loved to death. everyone loves our parks. As a former military, there’s two things we need fun absolutely: the military and our parks. Come on, America. if you think \$80, all year, every park, all the time, by a car load, is too much to ask, I mean, come on. It’s our parks. Those that don’t believe that we should invest in our parks. Our parks aren’t Republican or Democrat or Independent issue. It’s an American issue. America, step up. Go to our parks and enjoy them. They are treasures we need to invest in.” Later in the segment, Zinke discussed his involvement with Whitefish and said he will spend time over the weekend visiting national monuments in honor of Veterans Day.

How The Opioid Crisis Is Affecting Native Americans.

[NPR](#) (11/11) interviewed Dr. Ron Shaw, president of the Association of American Indian Physicians, about how the opioid crisis is affecting Native Americans. According to a report from the Centers for Disease Control, “the death rate of Native Americans from opioid overdoses was the highest of any racial demographic. Some 8.4 per 100,000 Native Americans died of opioid overdoses in 2014.” Shaw explained that “many Native American populations suffer from what is known as historical and intergenerational trauma,” which has “been shown to be associated with increased rates of depression, drug use and drug addiction.” Shaw advocates for getting native leaders to “testify before Congress,

including the Senate Committee on Indian Affairs, and try to put the native-specific issues before our legislators.”

Settlement Reached In Lawsuit Against Bureau of Land Management.

The AP (11/9, Warren) reported a federal judge on Wednesday “approved the terms that settle a long-running dispute involving the Bureau of Land Management and property owners along the Red River.” The BLM argued the river “has shifted as much as 2 miles (3.2 kilometers) in some areas over the past century, and some of the dry land where the river once flowed belonged to the government, not residents who claimed ownership.” The landowners’ lawyer, Robert Henneke, said BLM’s claims “amounted to an unlawful federal land grab.” Henneke explained the settlement “contains three provisions, including the one dictating that the river, wherever it may flow now and in decades to come, constitutes the boundary. Federal officials will dismiss the land surveys that were previously done, Henneke said, and the BLM will issue a disclaimer on maps the agency previously released showing federal boundaries that extended into Texas.”

Federal Vacancies Would Impede Recovery From Next Drought, Natural Resources Secretary Says.

The Santa Cruz (CA) Sentinel (11/11, Todd) reported California Secretary for Natural Resources John Laird said after the Democratic Women’s Club of Santa Cruz County meeting Saturday that the state would be in danger if another drought occurs because federal support remains uncertain. The Trump Administration has yet to fill “high-level vacancies for a slate of federal departments,” including the Bureau of Reclamation, which still lacks a commissioner. During the previous drought, “five agencies — two state departments and three federal departments — were in control of California’s water supply, Laird said.” Negotiations between state and federal agencies were vital “in providing timely relief, Laird said. Under the Obama administration, federal support was outlined within 24 hours.”

Catharsis Brings Burning Man Spirit To Nation’s Capital.

The AP (11/10, Khalil) reported on Catharsis on the Mall, a three-day event “that seeks to bring a small slice of the famed Burning Man festival to the foot of the Washington Monument.” The event began Friday afternoon and continued “the-clock through Sunday with seminars, events and performances in tents, stages and camps.” A “massive” metal dragon “will roll through the streets around the Capitol during a protest march at dawn Sunday. On Saturday night, a small wooden temple will be set ablaze under the close eye of fire marshals.” The AP said “R-Evolution, a 47-foot-high sculpture of a nude woman in a yoga pose that was featured at this year’s Burning Man,” would not be at the festival after the Interior Department reversed course on permission that was initially given by the National Park Service.

Park Service Wants To Ban Sports From Washington Monument Grounds.

The Washington Post (11/9, Ruane) reported the National Park Service said Thursday “that it wants to permanently close the grounds of the Washington Monument to recreational activities and increase reservation fees for use of its 28 athletic fields on the Mall and in Rock Creek Park.” NPS spokesman Mike Litterst said in an email that the Washington Monument ground “were closed earlier this year for turf restoration, and the Park Service wants that closure to continue after the project is finished this year.” The proposal would also increase reservation rate fees to “\$70 per two-hour block — \$30 an hour plus a \$10 administrative fee,” and “permitting will shift from the D.C. Department of Parks and Recreation to the National Park Service, the owner of the fields, Litterst said.”

DEPARTMENT PRESS RELEASES

Secretary Zinke & BLM invite sportsmen to enjoy upcoming deer season at the Sabinoso Wilderness
Donation of 3,500 Acres of land made the Sabinoso publicly accessible for first time ever

Taos, N.M. – U.S. Secretary of the Interior Ryan Zinke and the Bureau of Land Management are pleased to announce that the Sabinoso Wilderness – which contains some of the most pristine habitat in the country for elk, mule deer, and other wildlife – is for the first time ever accessible to the public for hunting, fishing, and other recreational activities. The 16,000-acre Sabinoso was previously wholly surrounded by non-federal land, making it inaccessible to the general public. However, a donation of 3,595 acres (formerly known as the Rimrock Rose Ranch) that are adjacent to Sabinoso Wilderness was accepted by the Secretary and is now public.

"I'm happy to announce today the Sabinoso Wilderness Area is finally open and accessible to hunters and all members of the public for the first time ever," **said Secretary Zinke**. "Expanding access to hunting, fishing, and recreation on federal lands is one of my top priorities as Secretary. I originally had concerns about adding more wilderness-designated area, however after hiking and riding the land it was clear that access would only be improved. Thanks to the donation of a private organization, we we continue to move toward delivering this nonpartisan win for sportsmen and the community."

"The BLM strives to be a good neighbor in the communities we serve, and along with our partners we are pleased to better connect the public to the Sabinoso," **said Acting BLM Director Michael D. Nedd**. "This action will provide folks with exceptional opportunities for hunting and fishing, as well as outdoor activities such as hiking, horseback riding, and backcountry camping in a pristine environment."

"The Mule Deer Foundation commends Secretary Zinke on the completion of this project which will go a long way toward expanding and enhancing opportunities to access otherwise difficult to reach lands," **said Miles Moretti, President/CEO of MDF**. "This is yet another example of Secretary Zinke's execution of a pro-sportsman policy agenda which he announced immediately upon being sworn in to his position."

"For years, hunters and anglers have called on Congress and federal agencies to help us gain access to landlocked public lands. We applaud Secretary Zinke for his commitment to this priority and look forward to 'unlocking the gate' so that America's sportsmen and women can experience what the Sabinoso has to offer by truly 'Making Public Lands Public,'" **said Jeff Crane, President of the Congressional Sportsmen's Foundation**.

Encompassing approximately 16,000 acres in northeastern New Mexico, the Sabinoso Wilderness previously was fully surrounded by private land, making it inaccessible to the public. However, by adding the donated land – approximately 3,500 acres formerly known as the Rimrock Rose Ranch – the Sabinoso now connects with neighboring BLM-managed land, making it publicly accessible for the first time since its Congressional designation as a Wilderness Area in 2009.

Now that the area is fully accessible, the BLM invites the public to experience the Sabinoso's unique and wild beauty. However, please be aware that Sabinoso is a wilderness area, and along with that designation the following items are prohibited: motorized vehicles and equipment, aircraft (including drones), and mechanical transport including off-road vehicles and bicycles.

For more information, please visit <https://www.blm.gov/programs/national-conservation-lands/new-mexico/sabinoso-wilderness> or call acting BLM Taos Field Manager Brad Higdon at 575-758-1620.

FEDERAL REGISTER LISTINGS:

Sent to the Federal Register on November 10th.

REG0007515 FWS Issuance of Import Permits for Zimbabwe Elephant Trophies Taken on or After January 21, 2016 and on or before December 31, 2018 -- This notice announces to the public that the Service has made a finding that the killing of African elephant trophy animals in Zimbabwe on or after 1/21/2016 and before or on 12/31/2018 meets the ESA criteria for authorizing imports. Notice 11/09/2017

REG0007605 NPS Request for Nominations: National Park System Advisory Board -- The FR notice requests nominations for the appointment of three members to the National Park System Advisory Board. Notice 11/09/2017

To: Alex Hinson[alex_hinson@ios.doi.gov]; Caroline Boulton[caroline_boulton@ios.doi.gov]; Daniel Jorjani[daniel.jorjani@sol.doi.gov]; David Bernhardt(b) (6); Douglas Domenech[douglas_domenech@ios.doi.gov]; Eli Nachmany[eli_nachmany@ios.doi.gov]; Getto, Leila[leila_getto@ios.doi.gov]; James Cason[james_cason@ios.doi.gov]; Laura Rigas[laura_rigas@ios.doi.gov]; Magallanes, Downey[downey_magallanes@ios.doi.gov]; Mashburn, Lori[lori_mashburn@ios.doi.gov]; Micah Chambers[micah_chambers@ios.doi.gov]; Natalie Davis[natalie_davis@ios.doi.gov]; Russell Newell[russell_newell@ios.doi.gov]; Scott Hommel[scott_hommel@ios.doi.gov]; Swift, Heather[heather_swift@ios.doi.gov]; Thiele, Aaron[aaron_thiele@ios.doi.gov]; Willens, Todd[todd_willens@ios.doi.gov]
From: Mashburn, Lori
Sent: 2017-11-13T13:21:05-05:00
Importance: Normal
Subject: Fwd: DOI Cabinet Affairs Report 11/13
Received: 2017-11-13T13:21:54-05:00
[DAILY UPDATE FOR CABINET AFFAIRS 11-13-17.docx](#)

DEPARTMENT OF THE INTERIOR DAILY UPDATE FOR CABINET AFFAIRS – 11/13/17

Lori Mashburn, White House Liaison
Natalie Davis, Special Assistant to the Secretary

STATUS OF THE SECRETARY

THIS WEEK: The Secretary is in DC.

- 11/13 Call with New Mexico Governor Susana Martinez
 - o Lunch with Joshua Tree Superintendent
- 11/14 Meeting with Majority Leader Kevin McCarthy, Sen. Barrasso, Rep. Cheney, and Rep. Cook
 - o Meeting with Senator Durbin
- 11/15 Meeting with The Nature Conservancy
 - o Meeting with National Park Service Regional Directors Meeting
 - o TENT. Gershwin Prize Event
- 11/16 OTR Breakfast Roundtable with Senators
 - o TENT. Museum Dedication Gala
- 11/17 Internal Meetings

STATUS OF THE DEPUTY SECRETARY

TODAY: Internal Meeting in DC.

WH COMMS REPORT (submitted Friday, 11/10)

Press Inquiries:

- Small inquiries and logistical inquiries.
- **RV News:** (David Rosansky)—**REQUEST--** I see a fine has been issued to Hamilton County Indiana in the amount of \$6,533 for two violations of NAGPRA. Can you tell me about that? I had thought the fine might be much higher based on the long term the parks department was not in compliance. Also, I believe the tribes submitted \$20,000 in expenses--**RESPONSE—** The Department of the Interior generally does not comment on pending civil penalty enforcement actions to avoid jeopardizing on-going investigations.
- **CQ Roll Call:** (Jackie Toth)—**REQUEST--** Can we get comment on Sen. Durbin's hold on the four Interior nominees on the Senate calendar?—**RESPONSE--** It's a false argument. Nominees like Brenda Burman have been waiting months for a vote. An October 23rd scheduling request doesn't explain the other 116 days.

Top Stories

- **KTUU Alaska:** [Veterans Day activities begins with reading of Vietnam Memorial Wall names](#)
- **E&E News:** [Durbin puts hold on nominees](#)
- **Philadelphia Inquirer- OPINION:** [Recognizing the Pa. veterans who just donated \\$40K to Vietnam War Memorial | Secretary Ryan Zinke](#)
- **Durango Herald- OPINION:** [Woolston: America's security and economy depend on ANWR](#)
- **New York Times:** [Lines Are Drawn Over Design for a National World War I Memorial](#)

Top Issues and Accomplishments

- Interior continues to support all Hurricane Harvey, Hurricane Irma, Hurricane Maria, and Hurricane Nate efforts. All bureaus are executing their emergency plans and assisting in Hurricane relief.
- Tonight, Secretary Zinke has a Fox News Interview with Shannon Bream. The hit is at 11 pm.
- Today, DOI made a personnel announcement regarding the four veterans Secretary Zinke has recently hired.
- Friday, Secretary Zinke will visit Manassas Battlefield to honor veterans and tour the battlefield.

· Saturday, Secretary Zinke will participate in five Veterans Day events and celebrations.

o **6:30 am EST:**

Secretary Zinke will join veterans in washing the wall at the Vietnam Veterans Memorial.

o **8:45 am EST:**

Secretary Zinke participates in a Veterans Day observance at the World War II Memorial.

o **10:30 am EST:**

Secretary Zinke will participate in the 64th annual Veterans Day National Ceremony at Arlington National Cemetery.

o **1:00 pm EST:**

Secretary Zinke will address the Vietnam Veterans Memorial Fund at the Vietnam Veterans Memorial.

o **3:30 pm EST:**

Secretary Zinke will give remarks at the Korean War Veterans Memorial Veterans Day Observance.

AGENCY MEDIA

WEEK AHEAD November 8 thru November 16, 2017 (submitted November 8)

Announcements/Releases/Events

U.S. Department of the Interior

Secretarial-level Announcements/Events/Interviews

This week the Secretary is in Washington, D.C.

· **November 14:** the "Stream Protection Rule" (related to OSMRE) will hit the Federal Register. Communications materials are forthcoming.

· **November TBD:** Major announcement regarding Arlington Memorial Bridge. Pending WH review.

December 4: Proclamation signing in Utah regarding the Antiquities Act. Communications materials are forthcoming.

· **November/December TBD:** USGS will release a report on critical minerals, followed by an EO and SO signing. Communications materials are forthcoming.

The Secretary stands ready to support the WH on media opportunities to push the President's Tax Reform Agenda. WH has dates/times of availability.

National Park Service

- **November TBD:** Local NPS Release: NPS will announce plans to re-establish operations at Virgin Islands National Park.
- **November 14:** Local NPS Release: Glacier National Park will notify the public of the availability of Glacier National Park's Lake McDonald Properties Management Plan Environmental Assessment (EA). The EA will be available for a 30-day public review and comment period. Following the public review and comment period, the park will prepare a formal decision document. The EA analyzes alternatives to manage NPS-owned properties surrounding Lake McDonald, which includes buildings listed on the National Register of Historic Places.
- **November 14:** National Joint Release: The U.S. Mint and the NPS will unveil the Indiana quarter at George Rogers Clark NHP. This is the last America the Beautiful Quarter® release scheduled for 2017, and the 40th of the 56-quarter series from the U.S. Mint recognizing national parks or historic sites around the country. Deputy Regional Director Patricia Trap will speak at the event.
- **November 15:** Local NPS Release: Death Valley National Park anticipates the simultaneous release of two Environmental Assessments for a 30-day public review. Public meetings will be held during the public review periods. Both projects address damage that resulted from a major rainstorm and extensive flash flood in 2015.
- **November TBD:** Local NPS Release: NPS NCR will issue news release on upcoming deer management and reduction at three western Maryland parks. All three parks did the same last year with minimal controversy.

U.S. Fish and Wildlife Service

- **November 13 (tent.):** National FWS Release: FWS will issue a release on the opening of the public comment for both the Candidate Conservation Agreements with Assurances (CCAA) policy and the corresponding regulations. These notices will solicit public comments on the 2016 revised policy and regulations to determine if there are additional revisions, particularly to the CCAA standard, that will make the policy and regulations easier to implement for those entities choosing to participate in a CCAA.
- **November 13:** Local FWS Release: FWS will announce the reopening of comment period on the proposed rule regarding the threatened species status for San Fernando Valley Spineflower.
- **November TBD:** FWS News Bulletin: FWS will issue a news bulletin regarding a NEPA Environmental Assessment related to lethal take permits for cormorants (a type of bird which is considered an invasive species) for aquaculture facilities.

Bureau of Land Management

- **November 14-15:** BLM will hold the final scoping meetings for the Notice of Intent to amend Greater sage-grouse land use plans in Vernal and Cedar City, UT,

respectively.

- **November 16:** Acting ASLM Kate MacGregor will deliver the keynote address at the Grand Junction Petroleum and Mining Club's monthly meeting in Grand Junction, Colo. Titled DOIs Role in Energy Dominance, her remarks will focus on the Administration's energy-related priorities, including efforts to streamline the environmental review and permitting processes, reduce regulatory burdens on energy development, and boost rural economies through job creation in the energy industry.
- **November 16:** BLM-AK Authorized Officer Erika Reed and Deputy Authorized Officer Dave Mushovic will attend a monthly Senior Leadership meeting for the Trans-Alaska Pipeline System, hosted by Alyeska Pipeline Service Company (the corporation that manages the system).
- **November TBD:** National BLM Release: BLM will issue a release announcing that Sabinoso Wilderness is now open to the public.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision about whether to grant a royalty rate reduction for the West Elk Mine. The BLM proposes to approve Mountain Coal Company, LLC's application for a royalty rate reduction from 8 percent to 5 percent for 10.3 million tons of coal in the West Elk Mine in southwest Colorado's North Fork Valley.
- **November TBD:** Local BLM Release: BLM-CO expects to issue a decision whether to modify GCC Energy's King II Mine in Montezuma County in southwest CO by 951 acres to allow GCC to access an estimated 4.66 million tons of recoverable Federal coal reserves for an additional 6.5 years of mining.

U.S. Geological Survey

- **November 13 (tent.):** The USGS will release the first-ever map of croplands worldwide using 30-m resolution, which is the highest resolution yet. This is a collaborative effort among international agencies. The map will clearly show individual farm fields and cover 1.874 billion hectares of croplands. This is a one-of-a-kind dataset primarily using Landsat satellite data. The map is part of the Global Food Security-Support Analysis Data @ 30-m (GFSAD30) Project. Partners and stakeholders include US federal agencies (NASA, USDA, EPA), Google, universities, and international research groups.
- November 13: National USGS Release: USGS will announce the estimated amount of uranium ore in portions of Texas, New Mexico, and Oklahoma. The discovery of calcrete deposits by industry led USGS to conduct an assessment. In the process of the assessment, a new species of uranium mineral was discovered by USGS.
- **November 15:** National USGS Release: USGS will issue a release announcing the Pecora Awards for Excellence in Earth Observation.
 - **November TBD:** Local USGS Release: USGS will issue a release regarding a new USGS study that tracks millions of tons of rocks, gravel and silt carried by the Sauk River and its tributaries to the Skagit River.

Bureau of Reclamation

- **November TBD:** National Reclamation Release: Reclamation will release two funding opportunity announcements under the Drought Response Program for drought resiliency projects and drought contingency planning. The Drought Response Program supports a proactive approach to drought. It will provide assistance to water users for drought contingency planning and to take actions that will build long-term resiliency to drought.

Bureau of Ocean Energy Management:

- **November TBD:** BOEM Note to Stakeholders: BOEM issue a note to stakeholders regarding Q3 FY17 study reports posting to ESPIS.
- **November TBD:** GOMR Sale 249 closeout NTS.
- **November TBD:** BOEM will announce a three-week extension of the Liberty EIS comment period.

Office of the Assistant Secretary-Indian Affairs (including Bureau of Indian Affairs)

- **November 14:** Acting Assistant Secretary-Indian Affairs Tahsuda and Acting Special Trustee Gidner will appear on the Native America Calling radio show to talk about the final deadline the US District Court set for November 27, 2017 for any Class Member or the heir of a Class Member to provide documentation so that payment can be made.
- **November 15:** "Rock Your Mocs (Moccasins) Day!" Acting Assistant Secretary-Indian Affairs Tahsuda will participate in the annual Native Youth inspired day by gathering with employee to "Rock Your Mocs!" This will be social media driven with our leadership, staff, and BIE Schools.

CONGRESSIONAL UPDATE

UPCOMING HNRC HEARING: The House Natural Resources Subcommittee on Indian Affairs is holding a legislating hearing on the following bills: H.R. 212 (Young of AK), expediting Congressional review of tribal funding agreement under ISDEAA; H.R. 2320 (Larsen), land into trust for Samish Indian Nation; and H.R. 3225 (DeFazio), allow certain OR tribes to lease or transfer land. Witness is pending.

Timing: Wednesday, November 15

Contact: Amanda Kaster, Policy Adviser, Congressional Affairs

PENDING COLORADO ANNOUNCEMENT: Sec. Zinke and Dep. Sec. Bernhardt have been working with Sen. Gardner and Rep. Tipton on a resolution to a long-standing issue in Western Colorado regarding the release of funds related to an old mine. This money would go to the state and counties. The previous administration did

nothing on this issue for the last eight years. DOI is working with the delegation on releasing these funds. It will be big news for the Senator, Congressman and rural Colorado.

Timing: TBD

Contact: Micah Chambers, Deputy Director, Congressional Affairs

POLITICAL APPOINTEE UPDATE

DOI politicals on board = 65

3 PAS confirmed as of 9/18.

6 nominated awaiting confirmation:

- Pending Senate floor vote: Susan Combs, Assistant Secretary Policy Management and Budget.
- Pending Senate floor vote: Brenda Berman, Commissioner, Bureau of Reclamation.
- Pending Senate floor vote: Joe Balash, Assistant Secretary, Land and Minerals
- Pending Senate floor vote: Ryan Douglas Nelson, Solicitor
- Pending Hearing: Tara Sweeney, Assistant Secretary for Indian Affairs
- Pending Hearing: Steve Gardner, Director, Office of Surface Mining and Reclamation
- **TO BE ANNOUNCED TODAY:** Tim Petty, Assistant Secretary for Water and Science

Overall:

- Schedule C: 36 of 68 onboard; 2 starting; 6 in process
- NC-SES: 26 of 44 onboard; 3 starting; 1 in process
- PAS: 3 Confirmed; 5 Announced; 14 of 17 Submitted to PPO

SECRETARY SPEAKING INVITATIONS

Accepted:

11/21 US Marine Corps Unveiling of the Iraq and Afghanistan engraving at Iwo Jima

Open (date TBC)- Americans for Tax Reform (DC)

Open (date TBC)- Detroit Economic Club

Event Postponed by organizers due to fire - 10/21 DEPA BOD Meeting (CA)

Outstanding Invitations in Process:

1/11/18 EEI CEO and Board Conference (Phoenix, AZ)

Declining

11/13 Montana Farm Bureau Federation Annual Meeting (Billings, MT)

11/14 George Rogers Clark National Historical Park Quarter Launch (Vincennes, Indiana)

11/15 Motorcycle Industry Council Symposium (Carson, CA)

11/29 Association of California Water Agencies 2017 Fall Conference and Exhibition (Anaheim, CA)

12/1-2 Western Governors Association Annual Meeting (Phoenix, AZ)

12/5-7 America Outdoors Association's 29th Annual Marketing and Management Conference for Outfitters and Adventure Resorts (Reno, NV)

12/6 American Exploration and Mining Association Annual Meeting (Reno, NV)

12/8 - Valley Industry and Commerce Association Annual Meeting (Los Angeles, CA)

12/11 Veterans Day Commemoration (Prussia, PA)

12/14 Leadership Missoula (Missoula, Montana)

12/8 DOI Toastmasters event (Washington, DC)

12/9 Western Caucus Foundation Winter Policy Meeting (Las Vegas, NV)

2/9-10 Associated General Contractors Western Chapter Annual Meeting (La Jolla, CA)

2/23/18 West Slope Colorado Oil and Gas Association Annual Meeting (Grand Junction, CO)

EMERGENCY MANAGEMENT

Interagency Hurricane response and recovery efforts:

USGS continues to provide support to FEMA by identifying, flagging, and surveying high water marks for communities impacted by riverine or coastal flooding in Puerto Rico. While this mission is expected to continue through December 15, field work will be completed this week and the team will begin to process and analyze the data they have gathered. A team of five scientists from the USGS Landslides Hazards Program (LHP) continues to conduct surveys documenting landslide occurrences. To date, over 50,000 landslides have been documented across Puerto Rico. Landslides have impacted infrastructure and property, and isolated several mountain communities.

DOI has 10 (-17) employees from bureaus and offices supporting the FEMA Surge Capacity Force. The group is comprised of volunteers that are located in Puerto Rico, the U.S. Virgin Islands, Nevada, and Florida. These personnel are expected to demobilize by November 28 and FEMA has concluded that additional DOI personnel

are not needed in support of this mission. DOI also has 31 (+7) employees supporting, or are scheduled to provide support to, the Small Business Administration (SBA). The group is comprised of volunteers working in New York, Texas, California, Virginia, Florida, and Washington, D.C.

Internal bureau and office-specific Hurricane response and recovery activities:

NPS reports that recent weather conditions and slowly subsiding water levels have improved conditions in the Big Cypress National Preserve, where staff has been working to restore facilities, infrastructure, and access to the public after Hurricane Irma.

USFWS has initiated a phased re-opening of the Florida Keys NWR Complex after closures were required due to impacts from Hurricane Irma. Visitor access was restored to the Crocodile Lake NWR, the National Key Deer NWR, the Key West NWR, and the Great White Heron NWR earlier this month.

Department of Homeland Security Reporting:

In Puerto Rico, power has been restored to approximately 43 (+7)-percent of customers and the expectation is that 95-percent of Puerto Rico will be restored by December 15. Potable water has been restored to more than 85 (+3)-percent of clients served by the Puerto Rico Aqueduct and Sewer Authority. The Guajataca Dam drawdown is now complete as water levels have dropped to 14 feet below the spillway. While a Flash Flood Warning remains in effect, the Puerto Rico Emergency Management Agency is working with the U.S. Army Corps of Engineers and the National Weather Service to discontinue the warning as early as today.

In the U.S. Virgin Islands, the Virgin Islands Water and Power Authority estimates 90-percent power restoration by late December. Over the last week, grid power service has increased to 38 (+17)-percent of the population for St. Thomas, 12 (+7)-percent for St. Croix, and 30 (+26)-percent for St. John. Telecommunication officials report 62 (+10)-percent of cellular sites are operational and an estimated 93 (+5)-percent of the population lives in areas where wireless voice and text service has been restored.

OUTSIDE MEDIA OF INTEREST (new)

Vice President Pence Honors Veterans By Cleaning Vietnam Memorial.

USA Today (11/11, Groppe) reported Vice President Mike Pence and Interior Secretary Ryan Zinke helped clean names etched onto the Vietnam Veterans Memorial Saturday. After arriving at the memorial with his wife, Pence, wearing blue jeans and yellow gloves, "carried an orange cleaning bucket with the message "Let's Do This" to an area close to the center of the wall." USA Today quotes Zinke saying to the vice president, "You scrub and I'll dry." ABC News (11/11) reported Pence "shook hands and posed for photos with the volunteers in subfreezing temperatures just after dawn." Pence and Zinke were also joined by James Pierce, "a National Park Service ranger who lost a leg while serving with the North Carolina Army National

Guard in Afghanistan.” The event was sponsored by the New Day USA, a mortgage company specializing in loans to veterans.

Zinke Says Democrats Holding Interior Nominees ‘Hostage.’

The AP (11/11, Daly) reports Interior Secretary Zinke on Thursday sent a “sharply worded letter” to Senate Minority Whip Dick Durbin accusing Senate Democrats of “holding the department’s nominees ‘hostage’ to a political agenda that includes opposition to his review of presidentially designated monuments.” Zinke asserted the nominees “have nothing to do with this monument review, yet they have been forced to sit on the sidelines [for months]. As a former Navy SEAL, this is not the type of hostage situation I am accustomed to.” According to the AP, “Durbin has placed holds on four Interior nominees: Susan Combs, nominated as assistant secretary for policy, management and budget; Joseph Balash, assistant secretary for land and minerals management; Ryan Nelson, solicitor; and Brenda Burman, commissioner of the Bureau of Reclamation, which oversees dams and water projects in 17 Western states.”

Fox News Interviews Zinke About Energy Production On Federal Lands, National Park Fee Hikes.

Interior Secretary Ryan Zinke was interviewed Thursday evening on Fox News @ Night (11/9) about criticism he has received from environmentalists. In response to concerns about increasing energy production on Federal lands, Zinke said, “If you want to make our country not dependent on foreign oil. I am a former seal. I don’t want to see your kids, my kids go to foreign shores and fight for a commodity we have here. We are going to do it right. We are not going to sell or transfer public land, but if you believe in the concept that the best science, best practices, greater good in the longest term, then you’re with the secretary of the interior. But if you believe public land is exclusive, only for the elite few that want to look at it but i’m a public access person. I think the public land should be available to america and the public.” Zinke also called criticism of National Park fee increases “baloney,” adding, “The greatest bargain in America is \$80 for a year-long pass of our public lands. I face an \$11.5 billion backlog of our public lands and parks. Our parks are being loved to death. everyone loves our parks. As a former military, there’s two things we need fun absolutely: the military and our parks. Come on, America. if you think \$80, all year, every park, all the time, by a car load, is too much to ask, I mean, come on. It’s our parks. Those that don’t believe that we should invest in our parks. Our parks aren’t Republican or Democrat or Independent issue. It’s an American issue. America, step up. Go to our parks and enjoy them. They are treasures we need to invest in.” Later in the segment, Zinke discussed his involvement with Whitefish and said he will spend time over the weekend visiting national monuments in honor of Veterans Day.

How The Opioid Crisis Is Affecting Native Americans.

NPR (11/11) interviewed Dr. Ron Shaw, president of the Association of American Indian Physicians, about how the opioid crisis is affecting Native Americans.

According to a report from the Centers for Disease Control, “the death rate of Native Americans from opioid overdoses was the highest of any racial demographic. Some 8.4 per 100,000 Native Americans died of opioid overdoses in 2014.” Shaw explained that “many Native American populations suffer from what is known as historical and intergenerational trauma,” which has “been shown to be associated with increased rates of depression, drug use and drug addiction.” Shaw advocates for getting native leaders to “testify before Congress, including the Senate Committee on Indian Affairs, and try to put the native-specific issues before our legislators.”

Settlement Reached In Lawsuit Against Bureau of Land Management.

The AP (11/9, Warren) reported a federal judge on Wednesday “approved the terms that settle a long-running dispute involving the Bureau of Land Management and property owners along the Red River.” The BLM argued the river “has shifted as much as 2 miles (3.2 kilometers) in some areas over the past century, and some of the dry land where the river once flowed belonged to the government, not residents who claimed ownership.” The landowners’ lawyer, Robert Henneke, said BLM’s claims “amounted to an unlawful federal land grab.” Henneke explained the settlement “contains three provisions, including the one dictating that the river, wherever it may flow now and in decades to come, constitutes the boundary. Federal officials will dismiss the land surveys that were previously done, Henneke said, and the BLM will issue a disclaimer on maps the agency previously released showing federal boundaries that extended into Texas.”

Federal Vacancies Would Impede Recovery From Next Drought, Natural Resources Secretary Says.

The Santa Cruz (CA) Sentinel (11/11, Todd) reported California Secretary for Natural Resources John Laird said after the Democratic Women’s Club of Santa Cruz County meeting Saturday that the state would be in danger if another drought occurs because federal support remains uncertain. The Trump Administration has yet to fill “high-level vacancies for a slate of federal departments,” including the Bureau of Reclamation, which still lacks a commissioner. During the previous drought, “five agencies two state departments and three federal departments were in control of California’s water supply, Laird said.” Negotiations between state and federal agencies were vital “in providing timely relief, Laird said. Under the Obama administration, federal support was outlined within 24 hours.”

Catharsis Brings Burning Man Spirit To Nation’s Capital.

The AP (11/10, Khalil) reported on Catharsis on the Mall, a three-day event “that seeks to bring a small slice of the famed Burning Man festival to the foot of the Washington Monument.” The event began Friday afternoon and continued “the-clock through Sunday with seminars, events and performances in tents, stages and camps.” A “massive” metal dragon “will roll through the streets around the Capitol during a protest march at dawn Sunday. On Saturday night, a small wooden temple will be set ablaze under the close eye of fire marshals.” The AP said “R-Evolution, a

47-foot-high sculpture of a nude woman in a yoga pose that was featured at this year's Burning Man," would not be at the festival after the Interior Department reversed course on permission that was initially given by the National Park Service.

Park Service Wants To Ban Sports From Washington Monument Grounds.

The Washington Post (11/9, Ruane) reported the National Park Service said Thursday "that it wants to permanently close the grounds of the Washington Monument to recreational activities and increase reservation fees for use of its 28 athletic fields on the Mall and in Rock Creek Park." NPS spokesman Mike Litterst said in an email that the Washington Monument ground "were closed earlier this year for turf restoration, and the Park Service wants that closure to continue after the project is finished this year." The proposal would also increase reservation rate fees to "\$70 per two-hour block \$30 an hour plus a \$10 administrative fee," and "permitting will shift from the D.C. Department of Parks and Recreation to the National Park Service, the owner of the fields, Litterst said."

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DEPARTMENT PRESS RELEASES

Secretary Zinke & BLM invite sportsmen to enjoy upcoming deer season at the Sabinoso Wilderness

Donation of 3,500 Acres of land made the Sabinoso publicly accessible for first time ever

Taos, N.M. U.S. Secretary of the Interior Ryan Zinke and the Bureau of Land Management are pleased to announce that the Sabinoso Wilderness which contains some of the most pristine habitat in the country for elk, mule deer, and other wildlife is for the first time ever accessible to the public for hunting, fishing, and other recreational activities. The 16,000-acre Sabinoso was previously wholly surrounded by non-federal land, making it inaccessible to the general public. However, a donation of 3,595 acres (formerly known as the Rimrock Rose Ranch) that are adjacent to Sabinoso Wilderness was accepted by the Secretary and is now public.

"I'm happy to announce today the Sabinoso Wilderness Area is finally open and accessible to hunters and all members of the public for the first time ever," **said Secretary Zinke.** "Expanding access to hunting, fishing, and recreation on federal lands is one of my top priorities as Secretary. I originally had concerns about adding more wilderness-designated area, however after hiking and riding the land it was clear that access would only be improved. Thanks to the donation of a private organization, we we continue to move toward delivering this nonpartisan win for sportsmen and the community."

"The BLM strives to be a good neighbor in the communities we serve, and along with our partners we are pleased to better connect the public to the Sabinoso," **said Acting BLM Director Michael D. Nedd.** "This action will provide folks with

exceptional opportunities for hunting and fishing, as well as outdoor activities such as hiking, horseback riding, and backcountry camping in a pristine environment."

"The Mule Deer Foundation commends Secretary Zinke on the completion of this project which will go a long way toward expanding and enhancing opportunities to access otherwise difficult to reach lands," **said Miles Moretti, President/CEO of MDF.** "This is yet another example of Secretary Zinke's execution of a pro-sportsman policy agenda which he announced immediately upon being sworn in to his position."

"For years, hunters and anglers have called on Congress and federal agencies to help us gain access to landlocked public lands. We applaud Secretary Zinke for his commitment to this priority and look forward to 'unlocking the gate' so that America's sportsmen and women can experience what the Sabinoso has to offer by truly 'Making Public Lands Public'," **said Jeff Crane, President of the Congressional Sportsmen's Foundation.**

Encompassing approximately 16,000 acres in northeastern New Mexico, the Sabinoso Wilderness previously was fully surrounded by private land, making it inaccessible to the public. However, by adding the donated land approximately 3,500 acres formerly known as the Rimrock Rose Ranch the Sabinoso now connects with neighboring BLM-managed land, making it publicly accessible for the first time since its Congressional designation as a Wilderness Area in 2009.

Now that the area is fully accessible, the BLM invites the public to experience the Sabinoso's unique and wild beauty. However, please be aware that Sabinoso is a wilderness area, and along with that designation the following items are prohibited: motorized vehicles and equipment, aircraft (including drones), and mechanical transport including off-road vehicles and bicycles.

For more information, please visit <https://www.blm.gov/programs/national-conservation-lands/new-mexico/sabinoso-wilderness> or call acting BLM Taos Field Manager Brad Higdon at 575-758-1620.

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Lori K. Mashburn
White House Liaison

Department of the Interior
202.208.1694